

From: [Eric Fullmer](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Revision to proposed 990
Date: Sunday, June 01, 2008 11:02:58 AM

The reporting requirements to complete Schedule G Part II seem ridiculous. Just how meaningful is it that we present the largest 2 events that gross more than \$5,000 and the total number of such events? I have no idea what a reader of Form 990 would get from that.

I am confused with the salary limits. It seems that some schedules request salaries over \$100,000 and other over \$150,000. Why not consider just one limit for all salary disclosures?

The 990 does not distinguish (and should) filing requirements for small organizations versus large ones. For example, what value is there in disclosing the number of voting members of the governing body of an organization with fewer than 25 employees and less than \$250,000 of net assets? The governance section would appear difficult to answer for a small organization. One size fits all forms will provide little value for smaller organizations that already have a small budget for administrative compliance issues.

Just my thoughts.

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From: [Keith Hearle](#)
To: [*TE/GE-EO-F990-Revision;](#)
cc: [Schultz Ronald J;](#)
Subject: Comments
Date: Sunday, June 01, 2008 2:48:29 PM
Attachments: [Hearle Comments.doc](#)

Attached are comments regarding the Form 990 Draft Instructions issued on April 7, 2008.

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May 31, 2008

Mr. Ron Schultz
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Form 990 Redesign, SE:T:EO
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Submitted by e-mail to: Form990Revision@irs.gov

Dear Mr. Schultz:

On behalf of Verité Healthcare Consulting, LLC, I am pleased to provide the Internal Revenue Service with comments on the Draft Instructions to Schedule H, released on April 7, 2008. It was a pleasure working with you, your colleagues, and the Stakeholder Group on the instructions over the last several months. My comments focus on the following issues.

1. There are several reasons to include restricted grants in the “direct offsetting revenue” that supports community benefit activities and programs
2. If restricted grants are not included in “direct offsetting revenue”, then the instructions need to define “restricted grants”
3. The instructions should clarify that donations made to support community building activities are to be included as reportable expense in Part II of Schedule H
4. The instructions either for Tax Year 2008 or for future years should allow organizations that have adopted HFMA Principles & Practices Board Statement 15 to report charity care and bad debt values based on that standard
5. The instruction for how organizations should respond to Part III, question A3 needs correction
6. The adjustment made to Worksheet 3 – used to quantify total and net community benefit expense for Medicaid and other means tested government programs – to avoid double-counting health professions education cost is not needed

7. "Total expense" in line 7 of Part I should include total expense from joint venture entities (based on the organization's proportionate interest in those ventures), if community benefit spending from those ventures is included in Schedule H
8. The instructions should clarify how organizations are to handle Medicaid and Medicare revenue received from "prior year settlements"

Each of these comments is discussed in more detail below.

1. There are several reasons to include restricted grants in the "direct offsetting revenue" that supports community benefit activities and programs

While I understand why the IRS decided not to include restricted grants in "direct offsetting revenue" for Tax Year 2008, below I articulate reasons why these resources (that are provided by individual donors, entities that fund research, and others) have, since the origins of the Catholic Health Association accounting framework, been counted as revenue that offsets "total community benefit expense."

- A. GAAP accounting is careful to apply the matching principle to restricted grants, and to record grant revenue together with associated expense

The "matching principle" governs numerous aspects of accounting – including revenue recognition, capitalization of expense, and others. Wikipedia has the following definition:

In [accounting](#), the **matching principle** indicates that when it is reasonable to do so, [expenses](#) should be matched with [revenues](#). When expenses are matched with revenues, they are not recognized until the associated revenue is also recognized....

When it comes to restricted grants, the matching principle suggests that grant-funded community benefit expenses should not be recorded unless the grants are recorded as revenue. This recognizes that the grants themselves (together with any hospital discretionary funds – which do flow into "net" community benefit expense) have a substantial role in creating the community benefit spending, and that if the grants were not received, it is highly possible that the bulk of the community benefit expense (e.g., a research study) would not be present. This also records the grant revenue consistent with donor/grantor wishes.

Not including these grants in “direct offsetting revenue” means that community benefit spending funded by unrestricted resources (such as the organization’s margin) is viewed as the same as spending funded by restricted grants. This is a counterintuitive result.

- B. Community benefit activities or programs funded by restricted grants already are recognized in the “total community benefit expenses” column of Schedule H

The CHA accounting framework has provided organizations with financial recognition for grant funded activities in two ways: first, the cost of the grant writing activity that leads to the funds being awarded is to be included in “community benefit operations”, and second, the full cost of each grant-funded program can be counted in “total community benefit expenses”.

The question is whether this treatment provides sufficient acknowledgment of an organization’s commitment to community benefit. For example, if a hospital seeks and obtains grant funding to establish a community clinic that significantly improves access to care and public health, but the grant fully covers the cost of operating the clinic, the “net community benefit expense” of this activity would be \$0.

I remember considering this problem back in 1989 when the CHA accounting framework was being designed. The above example is the main reason why the community benefit summary table includes both “gross” or “total” community benefit expense and “net” community benefit expense. It also is one of the reasons why the original framework also calculated “percent of expense” using both “gross” and “net” figures in the numerator. Over time, the focus has been on the “net” figure and not the “gross”, however both are meaningful and should be considered both by the IRS and by other readers of Schedule H information.

- C. The total and net community benefit expense columns serve different purposes, and not including restricted grants in direct offsetting revenue blurs distinctions between the two measures

The “net community benefit expense” column is meant to show how the organization devotes its discretionary, “excess funds” or margin to community benefit. This column was meant to answer the question: *how much of our margin or excess funds are we devoting to community benefit?* This question is challenging to answer if restricted grants are not included in “direct offsetting revenue.”

Note that this column also can be used to assess how (or whether) the community benefit standard is being met. Revenue Ruling 69-545 states the following:

"The hospital usually ends each year with an excess of operating receipts over operating disbursements from its hospital operations. Excess funds are generally applied to expansion and replacement of existing facilities and equipment, amortization of indebtedness, improvement in patient care, and medical training, education, and research."

Operating receipts include restricted grant revenue that is recorded in operating revenue when restrictions are satisfied (i.e., the funds are spent pursuant to donor/grantor wishes). Not including restricted grants in "direct offsetting revenue" on Schedule H may make it more difficult to assess whether the community benefit standard is being met – and whether "excess funds" are being used for community benefit.

The total community benefit expense column is meant to show the presence of community benefit activities and programs in the total expense budget. It answers the question: *how much of our expense budget is being used to provide community benefit?* This also is a meaningful question that the original CHA accounting framework was designed to address.

- D. Not including restricted grants in direct offsetting revenue will create distortions in Schedule H results, and is not equitable for organizations that historically have not received these types of resources

The decision to exclude restricted grants from "direct offsetting revenue" may have disproportionate effects on different types of hospitals. Organizations with substantial research expense or that historically have sought and received grant funding will be able to report higher net community benefit expense as a result of this decision. Small, community hospitals with limited experience accessing grant funding may not.

- E. The IRS should anticipate "accounting restructuring" that will bring research and other grant-funded activities onto the books of organizations that file Schedule H

Some major academic medical centers currently do not account include research expenditures on the books of their hospital operations; these expenses are borne by affiliated medical schools or research institutes. IRS should anticipate some

level of “accounting restructuring” to bring research and other grant-funded activities onto the books of organizations that file Schedule H.

- F. Excluding restricted grants from direct offsetting revenue may reduce the credibility of the values reported on Schedule H

I am somewhat concerned that excluding restricted grants will affect the credibility of the information reported in the “community benefit table” – particularly lines 7e through 7i. Because grants rarely if ever are restricted by donor / grantors to charity care and other means tested programs, over time users of the Schedule H information may focus their attention more on those items than on other categories of community benefit.

- G. The CHA accounting framework’s treatment of restricted grants has not been questioned for almost 20 years

The decision to exclude restricted grants from direct offsetting revenue changes a long-standing community benefit accounting practice. The CHA framework has been imbedded in the reporting requirements adopted by several states. Texas explicitly considered how grant funds should be accounted for when reporting community benefit, stating:

The costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments **from drug companies to pursue research; grant funds for research**; and disproportionate share payments.

... charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care only.

Texas includes research grants in offsetting revenue. Grants are not included in revenue only for two categories of community benefit: charity care and government-sponsored indigent health care. To my knowledge, no other states exclude restricted grants from revenue that offsets community benefit expense.

It will be interesting to see if state reporting requirements change based on the IRS decision regarding restricted grants.

2. If restricted grants are not included in “direct offsetting revenue”, then the instructions need to define “restricted grants”

Because IRS is indicating that for Tax Year 2008 “direct offsetting revenue” does not include restricted grants, the instructions should define “what is a grant” for purposes of Schedule H community benefit measurement. Without a definition, it is possible for organizations to exclude certain types of revenue inconsistently. I have received several questions about this already – whether certain types of revenue can be considered grant revenue or not.

The National Association of Children’s Hospitals (N.A.C.H.) has submitted a definition of “grants” for your consideration. That definition should be considered for incorporation into the instructions.

3. The instructions should clarify that donations made to support community building activities are to be included as reportable expense in Part II of Schedule H

I also agree with a comment submitted by N.A.C.H. that the instructions for Part II should indicate that donations to organizations that provide community building should be reported in Part II of Schedule H, and that the definition of “total community benefit expense” should incorporate the financial value of cash and in-kind donations. Currently there is only one place where donations are mentioned: Worksheet 8 which is to be used for Part I, Line 7 only. I’m concerned that organizations will neglect to include donations for community building activities in Part II unless the instructions are clarified.

4. The Instructions either for Tax Year 2008 or for future years should allow organizations that have adopted HFMA Principles & Practices Board Statement 15 to report charity care and bad debt values based on that standard

Worksheet 1 (Charity Care) and also Worksheet A (Bad Debt) require organizations to account for charity care and bad debt in ways that are not aligned with HFMA Principles & Practices Board Statement 15. Statement 15, which I firmly believe is the emerging standard, changes the accounting for both of these activities.

For charity care, the formula changes from the current approach in Worksheet 1:

Charges Forgiven x Ratio of Cost to Charges

To the following:

**(Total Charges for Accounts with any Charity x Ratio of Cost to Charges)
minus Any Revenue Accrued in the Accounts**

But - under Statement 15, charity care only occurs if the organization generates losses on accounts.

The amount patients are expected to pay, after discounts, thus must be lower than the cost of care or charity care is not being granted. The following table demonstrates the difference between the two approaches:

		Statement 15	Current Charity Care Worksheet
1	Account Charges	\$ 10,000	\$ 10,000
2	Discount Provided	75%	75%
3	Charity Care Write-Off		\$ 7,500
4	Payment expected (revenue)	\$ 2,500	
5	Payment actually received	\$ 1,250	
6	Bad debt	\$ 1,250	
7	Ratio of Cost to Charges	0.400	0.400
8	Total Account Cost	\$ 4,000	
9	Total Loss	\$ 2,750	\$ 3,000
10	Bad Debt	\$ 1,250	
11	Charity Loss (Gain)	\$ 1,500	\$ 3,000
12	Charity Care	\$ 1,500	\$ 3,000

In this example, a patient is receiving a 75 percent discount off of gross charges of \$10,000. The current Charity Care worksheet would value charity by taking the amount of the charges forgiven (\$7,500) times the ratio of cost to charges

(0.40), or at \$3,000.

Under Statement 15, charity would be valued at \$1,500, which is the difference between the total account cost ($\$10,000 \times 0.40$ or \$4,000) and the \$2,500 amount that the patient was expected to pay after the discounts (and that the hospital thus recorded as revenue). If the patient did not pay the full \$2,500 bill, then any amounts left outstanding would be written off to bad debt.

Accounting for charity care pursuant to Statement 15 thus is quite different, and is more complex because organizations will need to segregate accounts where the hospital's discounts result in actual losses from accounts where patients have received discounts but are expected to pay more than the cost of their care.

Some organizations voluntarily have adopted Statement 15 for purposes of charity care and bad debt accounting. Those organizations will be required to restate charity care and bad debt amounts for purposes of Schedule H, unless the instructions provide mechanisms for them to account for these values pursuant to this emerging standard. On the next page, I provide an alternative worksheet that can be used to account for charity care pursuant to Statement 15. Values have been added to show how the calculations would work.

Worksheet 1 Charity Care at Cost (Statement 15)	Accounts with Losses			Schedule H Total (A) = (A.1) + (A.2) + (A.3)	Accounts with Gains (B.1)
	Free Care	Uninsured with Partial Discounts	Under-Insured		
	(A.1)	(A.2)	(A.3)		
Gross patient charges					
1 Total for patients receiving financial assistance	\$ 4,012,000.00	\$ 633,600.00	\$ 821,000.00	\$ 5,466,600.00	\$ 707,000.00
2 Amounts written off pursuant to financial assistance policies	\$ 4,012,000.00	\$ 506,880.00	\$ 505,440.00	\$ 5,024,320.00	\$ 327,480.00
Total community benefit expense					
3 Ratio of patient care cost to charges	0.24	0.24	0.24		0.24
4 Estimated cost (either line 1 x line 7, or from cost accounting)	\$ 956,777.72	\$ 151,100.28	\$ 195,791.25	\$ 1,303,669.25	\$ 168,604.63
5 Medicaid or provider taxes				\$ 250,000.00	
6 Total community benefit expense (add lines 8-10)				\$ 1,553,669.25 ¹	\$ 168,604.63
Direct offsetting revenue					
12 Revenue from patients and third-party payers	\$ -	\$ 126,720.00	\$ 131,360.00	\$ 258,080.00	\$ 369,480.00
13 Revenue from uncompensated care pools or programs				\$ 375,000.00	
14 Restricted philanthropy and grants				\$ -	
15 Other revenue				\$ -	
16 Direct offsetting revenue (add lines 12-15)				\$ 633,080.00 ²	\$ 369,480.00
17 Net community benefit expense (line 11 minus line 16)				\$ 920,589.25 ³	\$ (200,875.37)
18 Total expense				\$ 100,000,000.00 ⁴	
19 Percent of total expense (line 17 ÷ line 18)				0.92% ⁵	

¹ Enter value on Schedule H, Question 7, Row a, Column (c)

² Enter value on Schedule H, Question 7, Row a, Column (d)

³ Enter value on Schedule H, Question 7, Row a, Column (e)

⁴ From line 24, Column (A) of Part V of Form 990

⁵ Enter value on Schedule H, Question 7, Row a, Column (f)

Regarding Worksheet A, Statement 15 also changes accounting for bad debt expense. According to Statement 15,

- “AICPA’s accounting standards executive committee believes health-care providers inappropriately classify some items as bad debts that were never revenue in the first place.”
- To be recorded as revenue, collectability must be “reasonably assured” and there must exist “pervasive evidence of a payment agreement between the provider and patient.”
- “Unless there is an expectation that the amounts will be collected, they should be deducted from revenue at the start of the record-keeping process. For example, for some self-pay patients it is quickly apparent that there is little or no realistic expectation of collection, so the deduction won’t result in bad debts but rather in a deduction from charges.”
- Bad debt should be valued “at the amount that the payer is expected to pay.”

Organizations that adopt Statement 15 for bad debt accounting purposes are likely to experience a significant drop in reported bad debt expense. Statement 15 requires organizations to record revenue and receivables based on the amount they actually anticipate collecting. That amount rarely would be full charges based on the charge description master (except for certain outpatient or ancillary services). In my view, this means that bad debt recorded by organizations that have adopted Statement 15 would be much closer to the actual financial loss associated with patients not paying their bills. Accordingly, those organizations should not take bad debt expense times the ratio of cost to charges, but should simply record the value of bad debt expense from their financial statements on Schedule H. The worksheet below may be helpful as IRS considers this issue.

Part III - Bad Debt Worksheet	
Net Cost of Bad Debt	
Calculation of the Net Cost of Bad Debt	
Schedule H Accounting:	
1 Bad debt expense (gross charges)	\$ 3,000,000.00
2 Bad debt recoveries, if any	\$ 300,000.00
3 Bad debt expense	\$ 2,700,000.00
Cost of Bad Debt	
4 Ratio of patient care cost to charges (from Worksheet 2, if used)	0.24
5 Estimated cost (either line 1 x line 2, or from cost accounting)	643,893.26
Optional Statement 15 Accounting:	
1 Revenue written off to bad debt	\$ 1,000,000.00
2 Bad debt recoveries, if any	\$ 200,000.00
3 Bad debt expense	\$ 800,000.00
Amount Reported in Part III	
	\$ 643,893.26

5. The instruction for how organizations should respond to Part III, question A3 needs correction

The instruction re: quantifying bad debt - Part III, A3 - has an error. The statement "only include cost of treating patients less amount of the discount" should instead read "only include the value of the charges that would have been forgiven multiplied by the ratio of patient care cost to charges."

6. The adjustment made to Worksheet 3 – used to quantify total and net community benefit expense for Medicaid and other means tested government programs – to avoid double-counting health professions education cost is not needed

Lines 6 and 7 that were added by IRS should be removed from Worksheet 3 - because the ratio of patient care cost to charges already adjusts out the cost of health professions education from Worksheet 5.

By adding these rows, IRS highlighted a potential double counting problem for organizations that don't use the ratio of patient care cost to charges from Worksheet 2. Organizations that use a cost accounting system or method other than the ratio of patient care cost to charges may neglect to remove education (and other community benefit costs that are reported elsewhere on Schedule H) in quantifying Medicaid costs, subsidized health services costs, and other

community benefit expenses. The instructions thus would benefit from the following statement: "Organizations relying on a cost accounting system or method other than the ratio of patient care cost to charges from Worksheet 2 should use care not to double-count community benefit expenses that already are fully accounted for in Line 7 - such as the cost of health professions education, community benefit operations, research, grant expenses, or others."

These amounts could be double counted in the cost of Medicaid or subsidized health services or charity care unless cost accounting systems explicitly exclude them.

If lines 6 and 7 are not removed - the footnotes on Worksheet 3 need to be adjusted so that the proper values are carried forward onto Schedule H (i.e., total community benefit expense after deducting the cost of health professions education).

- 7. "Total expense" in line 7 of Part I should include total expense from joint venture entities (based on the organization's proportionate interest in those ventures), if community benefit spending from those ventures is included in Schedule H**

The draft instructions also stated the following: "The IRS requests comments regarding the calculation of total expenses to make certain the denominator includes the organization's share of total expenses of all joint ventures, so that the numerator and the denominator consistently treat items attributable to such joint ventures."

"Total expense" for purposes of the Part I and Part II tables should include the organization's share of total expenses of all joint ventures if community benefits and community building activities from those joint ventures also are included in Schedule H.

- 8. The instructions should clarify how organizations are to handle Medicaid and Medicare revenue received from "prior year settlements"**

Organizations sometimes receive Medicaid and public-program revenue that is associated with services and cost reports from prior years. This occurs because it takes time (and in some cases years) for Medicaid (and other program) cost reports to be reviewed, audited, and finalized by state and/or federal government. This is particularly the case if organizations have appealed their

prior year cost report settlements. If appeals are successful, an organization can receive substantial revenue in a current fiscal year that relates to services provided in one or more prior fiscal periods.

This can result in a large negative number in Part I, Line 7, Column (e), and thus also to negative net community benefit numbers in total.

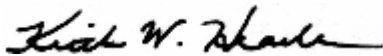
Under GAAP, organizations would report the prior-year revenue as revenue in the year it is received or when its collectability is reasonable assured. Organizations do not re-state prior year financial statements to record the prior-year revenue in the period when the associated services were provided.

The Schedule H instructions should provide guidance to organizations regarding how to account for prior year revenue – otherwise Part I, Line 7 will be completed inconsistently and will be open to misinterpretation. I recommend adding instructions that indicate that prior year revenue should be accounted for consistent with GAAP, that organizations be requested to disclose any material amounts of prior year revenue in Part VI of Schedule H, and that Worksheet 3 should include a new row where organizations can record the net effects of prior year revenue.

* * * * *

Thank you for the opportunity to provide the Internal Revenue Service with comments on the Schedule H instructions.

Sincerely,



Keith W. Hearle
President

From: [Pat Read](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments on Form 990 draft instructions
Date: Monday, June 02, 2008 12:30:33 PM
Attachments: [IS comments on 990 instructions FINAL.doc](#)

I am pleased to submit the attached comments from Independent Sector regarding the Draft Instructions for the 2008 Form 990. Please feel free to contact me if you have any questions.

Patricia Read

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<<IS comments on 990 instructions FINAL.doc>>



June 2, 2008

Lois G. Lerner
Director, Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
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RE: Comments on Draft 2008 Form 990 Instructions

Dear Ms. Lerner and Mr. Schultz:

Thank you for the opportunity to review and comment on draft instructions for the redesigned Form 990 proposed by the IRS on April 7, 2008. We commend you and your staff for your exceptional effort to bring greater clarity to the revised Form 990 and address concerns expressed by the nonprofit community in response to the initial draft revised Form.

The draft instructions add a number of new tools that will facilitate more consistent, accurate reporting by nonprofit organizations. Nonetheless, we have several recommendations and suggestions which we encourage the Service to address in the final instructions.

Highlights and General Instructions

We found the highlights to be extremely helpful, and we recommend that they be retained as part of the final instructions. We also found the glossary to be a helpful addition, and we recommend that terms included in the glossary be printed in boldface type, or some other identifying typeface, throughout the instructions.

Program Service Accomplishments (Part III)

The instructions of Part I, line 1, and Part III, line 1, correctly state that filing organizations should “describe the organization’s mission as articulated in its mission statement or as otherwise adopted by the organization’s governing body, if applicable.” While the governing body does bear primary responsibility for setting the vision and mission of the organization, it is not uncommon for organizations to have mission statements that have not been formally adopted by their governing bodies. The fact that the governing board has not formally approved or adopted the mission statement does not invalidate that statement.

Therefore, we recommend that the final statement – “If the organization does not have a mission that has been adopted by its governing body, leave this blank” – be removed.

As we noted in our comments on the draft Form 990, information about the filing organization’s program service accomplishments is essential for setting the context for governance, compensation, and financial information. An increasing number of charitable organizations are paying close attention to the best methods of describing the value of the services they provide to communities and the many different ways in which they improve lives. These methods can vary substantially, even with seemingly similar organizations, depending on the size and structure of the organization and the needs of the community it serves. ***Given the diversity of program services offered by organizations even within the same sub-sector (e.g., nursing homes, hospitals, etc.), we do not recommend at this time that the Service strive to impose uniformity through examples on how organizations should describe their program services.*** If the Service does choose to provide examples of how organizations might wish to describe their services, it should state explicitly that organizations are not proscribed from describing program accomplishments in a manner that most appropriately reflects their own mission and service objectives.

We remain concerned that the filing organizations can only report the direct program service revenues, not including charitable contributions and grants, that support their program activities. This results in a misleading picture of activities that contribute to – or subtract from – the organization’s bottom line. ***Since the instructions specifically indicate that organizations can report “the amount of any donated services, or use of materials, equipment, or facilities it received or used in connection with a specific program service, on the lines for the narrative description of the appropriate program service,” we recommend that the instructions also include a similar section regarding charitable contributions.***

Activity Codes (Part III and Part VII)

The Service notes that organizations should leave blank the activity codes for Part III, line 4, while it solicits comments on whether to rely on existing codes or develop new codes. However, on Part VII, line 2, column (A), the instructions call on filing organizations to code both related and unrelated program activities using the corresponding business code from the *Codes of Unrelated Business Activity* from the 2008 Form 990-T. As we stated in our September 2007 comments on the draft Form 990, we do not believe that the business codes used to describe unrelated business activities are appropriate for coding revenues from exempt services. We continue to believe that the National Taxonomy for Exempt Entities

(NTEE) is the most appropriate system for classification of nonprofit organizations and their program activities, but we recognize that further adjustments in NTEE are necessary to accommodate the full range of exempt activities undertaken by filing organizations. ***We again recommend that the IRS convene organizations like The Foundation Center, the National Center on Charitable Statistics, and Independent Sector, as well as other organizations and research programs with an interest in and experience with NTEE and other coding systems, to make the appropriate adjustments to NTEE. We further recommend that the Service amend the instructions to require that organizations apply the unrelated business codes only to their non-exempt activities on Part VII, line 2, column (A).***

Checklist of Required Schedules (Part IV)

Indirect Political Activities (Part IV, line 3): The Service has made a significant contribution in its descriptions of lobbying, advocacy, and political activities undertaken by exempt organizations in the instructions for Schedule C. Nonetheless, we are concerned that the draft instructions for Part IV, line 3, indicate that a filing organization must answer “yes” – and possibly jeopardize its exempt status – if political activities were undertaken by a partnership or other arrangement in which the organization is an owner, regardless of the extent of its ownership. This appears to be much more comprehensive than any previous guidance of which we are aware, and could raise significant confusion among 501(c)(3) organizations that are involved in, but are not a controlling or majority owner of, a joint venture or other partnership arrangement. While the concept behind this new reporting requirement appears to have value, many exempt organizations may need to reexamine and possibly withdraw from any such ventures which may have conducted or could conduct political activities without the exempt organization’s knowledge or approval. ***We therefore recommend that the IRS permit organizations a reasonable period in which to withdraw from or make any necessary adjustments to their existing joint venture or partnership agreements to be certain that the joint venture or partnership does not engage in political activities that could jeopardize the 501(c)(3) organization’s exempt status.***

State Filing Requirements (Part IV, lines 17-19 and 21-22): The instructions indicate that some organizations may need to complete the schedules to conform with state filing requirements, even though they are not required to do so by the IRS. It would be helpful to include this information in the general highlights as well.

Non-cash Contributions (Part IV, lines 29-30): We found these instructions somewhat confusing and encourage the IRS to direct the reader to the instructions to Schedule M and the glossary for definitions of terms and more detailed discussion of how to establish the value of non-cash contributions. We also note that there is not any definition or discussion of “contributions to the capital of the organization”, a term which we did not understand.

Related and controlled entities (Part IV, lines 33-35): These instructions were also somewhat confusing for organizations that are unfamiliar with the concepts of related and controlled entities, although there are definitions of these terms in the glossary. We

encourage the Service to add a chart to the instructions (or provide a reference to a chart on its website) that details the various types of related entities.

Other IRS Filings (Part V)

This section provides a good opportunity to educate exempt organizations about reporting obligations with which they may be unfamiliar. It would be helpful if the general highlights for Part V provided a specific reference to the excellent materials on the IRS website, particularly the “life cycle” charts, to help users who are unfamiliar with the different forms referred to in this section that they may be required to file. Also, since in other parts of the Form leaving a blank line could mean filing an incomplete return, we believe the instructions should make it clear for Part V that it is appropriate to leave a line blank if the line is not applicable to the organization.

The instructions for ***line 5, prohibited tax shelter transactions***, are especially important in educating charitable organization managers who may unknowingly become a party to a prohibited tax shelter transaction. ***We recommend that the IRS include information about where filers may find clear, up-to-date, readily accessible information on listed and other reported transactions to enable them to determine whether a transaction is potentially abusive or prohibited, and whether they are under an obligation to disclose participation in the transaction.***

The instructions for ***line 8, disclosure of excess business holdings***, need to include a definition of “excess business holding” or such a definition should be provided in the glossary. The explanation for “donor advised funds” notes that such a fund “is treated as a private foundation,” but the uninformed reader may not be aware of how private foundations are treated or how this may apply to their organization. We believe that phrase should either be deleted or explained. This also applies to the instructions for ***line 9, taxable distributions***, a term which is not yet defined in either the instructions or the glossary. In the editing process, the IRS should combine and clarify both lines 8 and 9 since there is much similarity in these two areas.

The IRS rightly repeats the instructions for 501(c)(12) organizations from the instructions for line 87 of the current Form 990; we recommend that the IRS also repeat the instructions for 501(c)(7) organizations from the instructions for line 86 of the current Form 990.

Governance, Management, and Disclosure (Part VI)

Independence of Board Members (Part VI, line 2): The definitions of independent board members provided in the instructions are clear, and provide helpful clarification about particular circumstances that would not cause a board member to lack independence. Nonetheless, we expect that there will be many questions from charitable organizations regarding whether certain board members are independent, e.g., does owning stock in a company from which the organization purchases goods or services constitute receiving an indirect material financial benefit from the organization? We believe that examples 2 and 3 in the instructions for Part VII, line 5, provide a useful starting point for examples of

independence: attorney C in example 2 would be independent; whereas director D in example 3 would not be independent. We are happy to work with the Service and other nonprofits to provide further clarification on this issue in the future.

Definition of family relationships: The definition here is not consistent with the definition provided in the glossary or the definition provided in the current Form 990 (lines 51 and 75b). It would be helpful for the filer and the reader if these definitions were made uniform.

Delegation of management to a management company (line 3): It is not clear whether the IRS intends to capture situations where an organization outsources some part of its management functions, but retains overall management authority. For example, Community foundation A may handle investments for other community foundations set up as supporting organizations to A. Should the supporting organizations answer “yes” to this question? Public charity B uses an outside accounting firm to issue checks and prepare its financial records. Should it answer “yes” to this question? There are many other examples where an organization may outsource particular services, and we believe that further clarification in the instructions could alleviate confusion.

Governing body review of Form 990 (line 10): Many boards of charitable organizations delegate responsibility for review of the Form 990 before filing to a separate finance, executive, or other committee made up primarily of members with the appropriate knowledge, rather than asking the full board to review the form before it is filed. Establishing the expectation that all board members will have an opportunity to review the Form 990 *before* filing could cause a greater number of organizations to request filing extensions and delay the receipt and availability of timely information. ***We recommend adjusting the instructions to permit organizations to answer “yes” if a copy of the organization’s final Form 990 was provided to a committee of the board or to all board members prior to its filing with the IRS.***

Governance Policies (Section B, lines 12-16): The instructions state that the organization should state “yes” if it implemented whistleblower and document retention policies on or before the last day of the organization’s tax year, but it does not provide the same statement regarding a conflict of interest policy. ***We recommend that the instructions state that organizations that have adopted such policies prior to the date their returns are to be filed should respond “yes” to all of these questions.***

The example provided in the instructions for a “conflict of interest policy” (line 12a) is an example of a situation that is not a conflict of interest, but it is not an example of a conflict of interest policy. One organization’s policy may describe how to manage this type of conflict of interest in its policy, while another may not. Furthermore, the example draws conclusions regarding B’s material financial interest in the legislative proposal. ***We recommend that the Service provide examples of conflicts of interest policies on its website that might help organizations understand how best to manage the conflicts that are inherent in the life of exempt organizations, and eliminate this example from the instructions.***

The “tip” regarding Sarbanes-Oxley legislation is a bit over-stated in that the statute imposes criminal liability for retaliation against whistleblowers who report federal offenses. On the other hand, there are many state laws that provide broader protection for whistleblowers at exempt and non-exempt organizations. This tip should be clarified in the final version of the instructions.

Process for determining compensation (line 15): It would be helpful to provide in the instructions the definition of “conflict of interest” as it relates to this issue.

Compensation of Officers Directors, etc. (Part VII)

The overview should state clearly that compensation should be drawn from the latest Form W-2 or 1099-MISC filed by the organization and all related organizations during or at the end of the filing organization’s fiscal year. It should further clarify that this compensation may not agree with information reported in Part IX, Statement of Functional Expenses, if the organization does use a calendar-year fiscal year. It would also be helpful if the overview for Section A provided the description of reportable compensation rather than simply referring to the Schedule R instructions. Finally, the note on page 6 regarding common paymaster should be included in the highlights at the beginning of the instructions for this section.

Definition of Key Employee: We believe that the definition of a “key employee” provided in the instructions for Part VII is overly broad and could require many larger exempt organizations to include several employees, imposing an unnecessary burden and diminishing the relevance of data for those who are in positions to have substantial authority over the organization’s activities. As written, a key employee could be the curator of a particular collection within a museum, the manager of a relatively small department within an organization, a planned giving or development officer who brings in contributions in a single year representing more than 5 percent of the organization’s annual revenues, and so on. ***We recommend that instead the Service define a key employee by position (such as the chief administrative officer, the chief operating officer, and the chief financial officer). If the Service chooses to include other program or financial managers, the threshold for determining the extent of a key employee’s control should be raised to at least 25%, following the standard set for the significant disposition of assets in Schedule N.***

In response to the Service’s request for comments regarding whether organizations should be required to report deferred compensation for an employee in the year in which such compensation is earned or paid, we recommend that filing organizations be permitted to choose either of these options, depending on the nature of their operations and the particular type of deferred compensation. In cases where the deferred compensation is subject to substantial forfeiture, the organization might determine that inclusion of deferred compensation before it is paid would overstate the employee’s compensation. In other cases, the organization might feel that including the entire deferred compensation in the year

in which it was paid or in which the employee is fully vested would provide a misleading impression of the employee's compensation in that given year.

Statement of Revenue (Part VIII)

As noted earlier, we recommend that the Service only require organizations to provide activity codes from the *Codes of Unrelated Business Activity* for their non-exempt activities. We found the other parts of these instructions to be clear, and we especially appreciate the helpful clarification regarding membership payments and the distinctions between government contributions and contracts. It would be helpful if the note related to federated fundraising agencies provided on page 19 of the instructions for Part IX were included in the general instructions for Part VIII.

Reporting of Non-Cash Contributions (Part VIII and Schedule M): The instructions to Schedule M clarify appropriate reporting methods for non-cash contributions based on the organization's record keeping practices, and we believe it would be helpful to repeat that clarification in the instructions for Part VIII, line 1, rather than the current statement that organizations must "report the value of non-cash contributions at the time it was received." We further commend to the Service's attention the comments of our member, the American Association of Museums, which provide additions and corrections to the instructions regarding Schedules B and M.

Statement of Functional Expenses (Part IX)

The discussion of *how to allocate expenses* (page 13) indicates that filers should "not make any entries in column A for offsetting entries," but the example below it includes a negative entry in column A of \$5,000 for fundraising expenses. The instructions should be revised to indicate that organizations should not make offsetting entries in column A EXCEPT for [note the specific circumstances that apply].

Lobbying fees (11d): The instructions should clarify the relationship between fees to be reported on 11d and 11g (amounts paid to an independent contractor for advocacy services that do not constitute lobbying). It is not uncommon for a 501(c)(3) organization to hire a legislative liaison who provides advice on congressional activities or regulatory items unrelated to lobbying, or monitors and acts on items included in self-defense lobbying.

Professional fees (lines 11a-11g): For consistency, the instructions for all lines should indicate that these are for services provided by outside firms and individuals who are not employees of the reporting organization.

Advertising (line 12): We continue to find the instructions regarding including "amounts for the organization's in-house fundraising campaigns" in this line both confusing and contrary to standard accounting practices for many organizations. Generally, organizations would report office expenses, travel, or conferences/meetings used in fundraising efforts under the respective line item under column (D). We do not see the value of requiring organizations to report these expenses differently for each column.

Balance Sheet (Part X)

The instructions for the balance sheet are generally clear, but some of our members have noted that guidance is needed regarding methods to be used for establishing the value of intangible assets (line 14) such as goodwill, mailing lists, etc.

Comments on Schedules

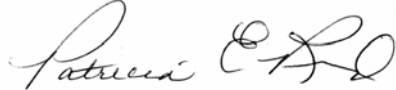
The instructions for Schedule A provide very helpful information on the different types of charitable organizations and distinctions between types of supporting organizations. We think it would be helpful if the description of “gross receipts from related activities, etc.” include the clarification of how membership fees that are payments to purchase admissions, merchandise, services or the use of facilities in a related activities for both Part II (organizations exempt under 170(b)(1)(A)(iv) and (vi)) and Part III (organizations exempt under 509(a)(2)).

We have not yet gathered recommendations from our members regarding which countries ought to be included in the regions identified under **Schedule F**. Given that organizations currently use different regional groupings, we recommend that the IRS permit organizations to use their own groupings for the first filing year, rather than impose a new grouping that has not yet been determined.

As noted earlier, we appreciate the greater clarity provided in the instructions for **Schedule M**, but we commend the comments offered by the Association of American Museums to the Service’s attention. We further recommend that the instructions regarding **Non-standard contributions (line 31)** be expanded to include two other conditions identified in Notice 2007-72, that is, (c) items where the charity has agreed not to transfer its interest for a period of time; or (d) items where the charity has agreed to sell its interest to a party selected by or related to the donor.

We thank you again for your efforts to reach out to the nonprofit community to make the revised Form 990 a more effective tool to strengthen compliance and accountability of all exempt organizations. We look forward to working with you as you continue to improve the instructions to the Core Form and Schedules and educate exempt organizations about using the new Form in making their annual reports. Please contact me at 202-467-6147 or pat@independentsector.org for further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Read".

Patricia Read

Senior Vice President, Public Policy and Government Relations
Independent Sector

From: [Matthew Anderson](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Minnesota Hospital Association 990 Instructions Comment Letter
Date: Monday, June 02, 2008 2:59:01 PM
Attachments: [Minnesota Hospital Assn 990 instructions comment letter.pdf](#)

Attached is Minnesota Hospital Association's 990 instructions comment letter. Thank you.

Matthew L. Anderson
Vice President, Regulatory/Strategic Affairs
manderson.mnhospitals.org
(651) 659-1421



Minnesota Hospital Association

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June 2, 2008

Via Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: COMMENTS ON DRAFT INSTRUCTIONS FOR FORM 990, INCLUDING SCHEDULE H

On behalf of our 145 member hospitals, the Minnesota Hospital Association (MHA) appreciates the opportunity to submit comments on the draft instructions for Form 990, including Schedule H for Hospitals. MHA's comments support those submitted by the American Hospital Association (AHA). Our comments focus on Schedule H, and raise issues with several aspects of the draft instructions for Form 990, Schedule J, Compensation Information, and Schedule K, Supplemental Information on Tax-Exempt Bonds.

SCHEDULE H

Minnesota's hospitals are tax-exempt, mission-driven organizations. They range from large, complex health care systems to small, rural hospitals. It is important that the Schedule H instructions be constructed in a manner that avoids unnecessary burdens or expenses for hospitals – both small and large. There are some areas where the draft instructions need to be improved to further minimize the burden on hospitals and achieve greater clarity and consistency.

Part I Charity Care and Certain Other Community Benefits

Some of our members' corporate structures include multiple corporations that provide community benefit activities in addition to those conducted directly by the hospital. The draft instructions provide that Schedule H should aggregate information from disregarded entities and joint ventures, but does not provide a mechanism to capture activities from related corporations that operate within the hospital system or holding company structure. It is unclear from the draft instructions how organizations should account for community benefit activities being provided by related foundations or tax-exempt organizations within a multi-entity health care system. MHA urges the Internal Revenue Service (IRS or Service) to clarify in the final instructions how such community benefit activities should be reported, since activity that would have been conducted by the hospital but for the corporate structure should be reportable activity.

To calculate amounts to be included in the charity care and other community benefit table, the draft instructions provide that organizations may use the worksheets provided with the instructions or other equivalent documentation that substantiates the information reported consistent with the methodology required in the worksheets. Many of MHA's member hospitals have developed or licensed software programs to capture community benefit information. The final instructions should clarify that such software created or purchased by health care organizations constitutes "other equivalent documentation" whose use does not require an organization to duplicate effort by capturing equivalent information on the worksheets.

Grants

MHA supports the proposed treatment of grants restricted for community benefit activities because it will encourage hospitals to seek such grants to support programs and services that otherwise might not have been available in their community.

The draft instructions do not require an organization to count restricted or unrestricted grants that it receives and uses to provide community benefit as "Direct offsetting revenue" in computing "Net community benefit expense" on the charity care and other community benefit table. The draft instructions also provide that an organization may not report on Line 7(i) (Cash and in-kind contributions to community groups) any contributions that were funded in whole or in part by a restricted grant from a related organization. Moreover, the draft instructions provide that unrestricted grants or gifts to another organization that may, at the grantee organization's discretion, be used other than to provide community benefit may not be reported on Line 7(i).

Thus, it appears that if an organization makes a grant to a related organization, including to a foundation or other tax-exempt organization that is not required to file Schedule H, the organization should include such grant in Line 7(i), as long as it is restricted to be used to provide community benefit and was not funded by a restricted grant in the first place. This could also include a grant that was subsequently used by the related organization to fund in whole or in part a grant to another organization. Although this conclusion follows from the draft instructions as written, MHA requests that the IRS clarify this point in the final instructions.

Reporting Benefits

MHA supports the Service's decision to remove bad debt expense from the total expense figure used in the denominator in Column (f) "Percent of total expense." The accounting principles adopted by the American Institute of Certified Public Accountants (AICPA) instruct hospitals to treat charges written off as bad debt as an addition to expenses rather than a deduction from revenue. Backing out bad debt expense from the total expense figure recognizes that charges for bad debt are not an "expense" in the true sense of the word, but rather a way of accounting for the absence of revenue in the income statement. Leaving bad debt expense in the total expense figure would artificially inflate the denominator. The IRS should clarify that hospitals following other standards, such as those of the Government Accounting Standards Board (GASB), will not need to make this adjustment.

Under Line 7, Column (c) instructions, we suggest adding the words “if desired” to the end of the first sentence to ensure hospitals understand that these worksheets are optional.

Under Line 7, Column (f) instructions, the appropriate accounting term is “bad debt expense” throughout.

Medicaid Provider Taxes

The Service specifically requested comments on how filing organizations should report the cost of Medicaid and provider taxes (Worksheet 1, Line 4) and revenue from uncompensated care pools or programs, including Medicaid Disproportionate Share Hospital (DSH) funds (Worksheet 1, Line 6), as costs and revenues associated with charity care (Worksheet 1) or with Medicaid and other means-tested government programs (Worksheet 3). MHA supports following a “primary purpose” approach. In Minnesota, hospitals pay both a Medicaid surcharge and a MinnesotaCare provider tax to financially support our state’s Medicaid program as well as government program for insuring low-income individuals and families. This primary purpose approach would recognize that the Medicaid surcharge and MinnesotaCare tax constitute costs associated with Medicaid and other means-tested government programs.

The wording in the instructions for Worksheet 1, Line 4, however, is confusing, and results in a narrower-than-intended interpretation of what hospitals should report. MHA joins the American Hospital Association (AHA) to suggest the following changes:

Line 4: Enter the amount of Medicaid provider taxes paid by the organization, if payments received from an uncompensated care pool or Medicaid Disproportionate Share Hospital (DSH) program in the organization's home state are intended primarily to offset the cost of charity care. If such payments are primarily intended to offset the cost of Medicaid services, then report this amount in Worksheet 3, Line 4(A). “Medicaid provider taxes,” sometimes termed a “fee” or “assessment,” or “health care-related tax,” means amounts paid or transferred by the organization to one or more states as a mechanism to generate federal Medicaid funds.

MHA and AHA suggest deleting the last sentence because it does not add to the definition and creates the false impression that provider tax programs uniformly benefit individual providers.

On Worksheet 1, Line 4 and Worksheet 3, Line 4, delete the word “or.”

Definition of Subsidized Services

Hospitals subsidize a range of services to meet the specific needs of their communities. These needs differ greatly based on demographic and geographic factors, as well as the unique needs or concerns of a particular community. Accordingly, MHA urges the IRS to refrain from using blanket exclusions of certain specific types of services as “subsidized services. Instead, if a particular service meets the criteria outlined in the draft instructions, then a hospital should report it as a subsidized service.

Part II Community Building Activities

Under Line 8 (Workforce development), the IRS should broaden the category to include other circumstances in which physician recruitment can be reported, such as the absence or shortage of a particular physician specialty. MHA suggests amending the existing language to add “or in other circumstances where there is an identified community need for a particular type of physician(s)” after the word “underserved.”

Part III Bad Debt, Medicare & Collection Practices

MHA urges the IRS to explicitly recognize that this section permits:

- important and uniform reporting of bad debt expense information and an explanation of why certain portions of bad debt should be considered community benefit; and
- important information regarding Medicare revenues and costs, shortfalls or surpluses and an explanation of why certain portions should be treated as community benefit.

These additions would reinforce the IRS’ view of the importance of collecting this information.

Section A

MHA supports the IRS and its clarification in the draft instructions that hospitals are not required to adopt or rely on the Healthcare Financial Management Association’s Statement No. 15. MHA also appreciates the assurances that a “no” response to the related question at Line 1 in Part III, Section A will not reflect poorly on an organization or otherwise be used to target an organization for an audit.

Line 4 requires an organization to provide the text of the footnote to the organization’s financial statements that describes bad debt expense. The draft instructions further provide that footnotes related to “accounts receivable,” “allowance for doubtful accounts,” or similar designations may satisfy this reporting requirement. In case some hospitals’ financial statements do not contain footnotes relating to bad debt expense or any noted or similar designations, MHA suggests that the IRS clarify that organizations are not required to create footnotes in financial statements merely to satisfy this question.

Section B

Under Section B-Medicare, Line 8, MHA recommends incorporating the following language, or something similar, into the instructions:

An organization’s rationale may have any reasonable basis, including the amount of the shortfall that might otherwise have been used to support the programs included in Parts I or II, an estimate of the income range of the organization’s Medicare patients, an estimate

of the number of Medicare patients also eligible for the Medicaid program (dual eligibles), or whether the organization reports the amount of Medicare shortfall to any state government authority identified in Part IV, Line 8, or any other government authority.

MHA urges the IRS to allow hospitals the same options for accounting for Medicare costs as are available for other parts of Schedule H. The draft instructions are confusing and provide conflicting guidance. For example:

- By using the word “allowable cost” in Line 5, the IRS implies that hospitals should use Medicare cost reporting rules and accounting standards to calculate the Medicare shortfall. The inclusion of multiple choices on Line 8, however, implies that hospitals have the ability to use the most accurate method available to them as they do elsewhere on Schedule H. The instructions provide no guidance on what those checkboxes mean.
- Line 5 of Part III says to “Enter total revenue received from Medicare (including DSH and IME),” and the instructions provide further guidance on what revenues to include or exclude. One item that is specifically *included* is Part B physician services. On the worksheet supporting Line 6, the IRS says to take Medicare allowable costs (from the Medicare Cost Report). The Medicare cost report does not account for the revenues and costs of Part B physician services because they are paid under a different payment system. Thus, the instructions include Part B physician services in revenues, but exclude them from costs.

Medicare cost report accounting is very different from Generally Accepted Accounting Principles (GAAP) standards and, as such, will be very different from what hospitals consider the most accurate costing method to use elsewhere on Schedule H. The Medicare cost report is designed only to produce cost estimates for a specific subset of Medicare programs. It excludes parts of the Medicare program that may contribute to Medicare gains or losses for the hospital, like Part B physician services as mentioned above, and the revenues and costs associated with Medicare Advantage patients. Worksheet 3 specifically asks hospitals to include the revenues and costs associated with Medicaid managed care patients. To be consistent with the calculations on other parts of the form and provide a full accounting with respect to Medicare, Section B should capture the costs and revenues associated with *all* Medicare services and patients using the most accurate approach available.

Part V Facility Information

MHA urges the IRS to define “facility” as “an entity that is licensed and/or certified as a hospital. The definition of “facility” proposed in the draft instructions is too broad. Under this definition, large health care systems that operate numerous hospitals will be required to report every building, structure, clinic, etc. Such a reporting requirement will amount to dozens of pages of information being submitted to satisfy this question. For large complex health care systems, such a broad definition would require details that are not meaningful to understanding the hospital.

FORM 990 – KEY EMPLOYEE

The draft instructions use a broad definition of “key employee” that would be unnecessarily burdensome to hospitals. Hospitals and hospital systems can be large and complex organizations, and the new definition does too little to mitigate the burden associated with this new reporting requirement. We agree with the AHA and the American Society of Association Executives (ASAE) that the definition of “key employee” remains too broad and sweeping and should be further refined. A percentage threshold well above 5 percent and a tighter management control standard coupled with an upper limit on the number of employees to be reported – preferably limited to three – should replace the current definition. If experience with the new form ultimately suggests the need for a more expansive definition, the IRS should revise it at that time.

SCHEDULE J – DEFERRED COMPENSATION

The draft instructions to Schedule J would require reporting deferred compensation in the year earned, whether or not funded, vested or subject to substantial forfeiture, *and* in the year paid. Although final Schedule J includes column (F) for the reporting of amounts that were also reported in another year, this fails to address the unfairness and misperception associated with reporting compensation that is not yet considered income to the recipient. Unpaid, unvested deferred compensation should be reported only in the year the compensation is paid to and considered income of the recipient.

SCHEDULE K – SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS

The draft instructions would require organizations to complete Schedule K for each outstanding tax-exempt bond that had an outstanding principal amount in excess of \$100,000 as of the last day of the tax year and was issued after December 31, 2002. The draft instructions further provide that refundings after December 31, 2002 of pre-2003 issues must be treated as post-2002 issues and reported on Schedule K. MHA urges the IRS to clarify that such reporting does not include information on expenditure and investment of proceeds or uses of bond-financed facilities occurring prior to 2003.

MHA appreciates the opportunity to submit our comments on behalf of our member hospitals. If you have any further questions, please contact me at (651) 659-1421 or manderson@mnhospitals.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew L. Anderson', with a long horizontal flourish extending to the right.

Matthew L. Anderson
Vice President, Regulatory/Strategic Affairs

From: [Marjorie Parker](#)
To: [*TE/GE-EO-F990-Revision;](#)
cc: [Clarke Stephen M; Laura E. Noble; Craig McKnight; Rick L. Gundling;](#)
[Jim Alexander;](#)
Subject: HFMA comments on draft instructions to the Form 990
Date: Monday, June 02, 2008 4:12:47 PM
Attachments: [400615 HFMA Comments 2008 on Form990.doc](#)

Marjorie Parker
hfma
Office Manager
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Don't Miss HFMA's Fall Education Events
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hfma

healthcare financial management association

By Electronic Filing June 1, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: COMMENTS ON DRAFT FORM 990, SCHEDULE H, AND SELECTED OTHER INSTRUCTIONS

The Healthcare Financial Management Association's (HFMA's) Principles and Practices Board appreciates the opportunity to formally comment on the draft Form 990 and Schedule H instructions, and we especially we applaud the ongoing efforts the IRS has made to get input from the healthcare community. Throughout the IRS's informal deliberations and discussions with HFMA and provider associations, we have been able to share extensive recommendations and observations. Therefore in these formal comments we will concentrate instead on selected specific points that we believe are of paramount importance.

Minimizing administrative burden

We appreciate the interest and objectives of Congress and others to ensure that tax-exempt status is granted appropriately. However, we have learned from past governmental approaches to oversight that overly burdensome reporting discourages the creation of, and impedes the functioning of, nongovernmental entities, many of which fill important societal needs that government will not or cannot meet. Minimizing burden and providing flexibility in reporting is paramount to the continuation of the critical services provided by many charitable, tax-exempt organizations.

Although much effort has gone into assessing the additional reporting burden that will result from the proposed revisions, those efforts cannot provide the insight that comes from actually completing the forms with real data from live records. There is much to be learned from the hospitals that will be performing "dry runs" of applying the Revised Form 990 reporting requirements to 2008 returns. Therefore, we repeat HFMA's recommendation from its September 2007 comment letter that because of the magnitude of the substantial new requirements, the IRS should permit hospitals to submit comments to the IRS into 2009 to share what they learn from applying the new requirements, and allow you the opportunity to respond with supplemental or updated instructions before

making the first official use of the new forms effective for the 2009 reporting year (to be submitted in 2010).

Reference to HFMA Statement 15

The clarification is appropriate in the draft instructions for Schedule H, Part III, Section A, that hospitals are not required to adopt or rely on the HFMA's Principles & Practices Board Statement No. 15 (*Valuation and Financial Statement Presentation of Charity Care and Bad Debts by Institutional Providers*), as is the assurance that a "no" response to the related question at Line 1 in Part III, Section A will not reflect poorly on an organization or otherwise be used to target an organization for an audit.

Statement 15 is intended to provide guidance in areas where additional guidance or interpretation is needed regarding the documentation and disclosure requirements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants' *Audit and Accounting Guide, Health Care Organizations*. We believe IRS interest in the reporting practices recommended by Statement 15 will serve to promote positive change in the healthcare industry.

Cost vs. net recognized revenue

We strongly recommend that the Schedule H instructions stress the clear and crucial distinction between the *cost* of care (which is the basis for measuring charity care) and the *net, recognized amount* of revenue (which is the basis for measuring bad debt).

Charity care is an indicator of the degree to which low-income, usually uninsured individuals require subsidized care because they are unable to pay for the services they need. In the current health policy debate, accurate charity data are important for understanding and evaluating efforts to ensure indigent populations have adequate health coverage and access to care. Cost-based reporting is an appropriate method to evaluate the financial consequences of such policies and, by extension, an important category of charitable service.

Bad debt is fundamentally different. It is the amount of revenue that a hospital expects to receive for a service, but that the payer does not pay. When reporting revenue for patient services that is foregone because of bad debt, such revenue should be recognized only when it meets the following GAAP criteria:

- Pervasive evidence exists of a payment agreement between the provider and the patient,
- Services have been rendered,
- The price is fixed or determinable, and
- Collectibility is reasonably assured

Cost-based reporting of bad debt is inappropriate, because these revenue amounts have a varying relationship to cost, ranging from cost-plus-margin to cost-minus-discount, depending on the hospital's policies and the individual's income level.

Bad debt is both an indicator of operational efficiency for hospitals and a measure of the degree to which payers honor an agreement to pay their debt. In the current health policy debate, accurate bad debt data are especially important for understanding consumers' behavior as insurance benefit designs shift more financial obligations to individuals. If this distinction is not crystal clear to both reporters and users of this data, the opportunity to understand these very different categories of uncompensated care is largely lost.

Bad debt footnotes

Line 4 requires an organization to provide the text of the footnote to the organization's financial statements that describes bad debt expense. The draft instructions further provide that footnotes related to "accounts receivable," "allowance for doubtful accounts," or similar designations may satisfy this reporting requirement. We concur with the American Hospital Association's concern that many healthcare organizations' financial statements may not contain footnotes relating to bad debt expense or any similar footnotes or designations. The instructions to this question should clarify that organizations are not required to create footnotes in financial statements regarding bad debt expense or to satisfy this question.

Worksheets

We commend the IRS for the clarification provided in the Highlights to Schedule H regarding the completion of the Worksheets or alternative, equivalent documentation. We recommend that similar language be used to maintain that clarity within the Schedule H Instructions.

We concur with the American Hospital Association's suggestion of the following regarding the language for Worksheet 1 changes related to Medicaid:

Line 4: Enter the amount of Medicaid provider taxes paid by the organization, if payments received from an uncompensated care pool or Medicaid Disproportionate Share Hospital (DSH) program in the organization's home state are intended primarily to offset the cost of charity care. If such payments are primarily intended to offset the cost of Medicaid services, then report this amount in Worksheet 3, Line 4(A).

"Medicaid provider taxes," sometimes termed a "fee" or "assessment," or "health care related tax," means amounts paid or transferred by the organization to one or more states as a mechanism to generate federal Medicaid funds.

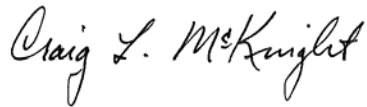
Conclusion

The revised Form 990, Schedule H, and instructions offer tremendous potential to bring the role of tax-exempt hospitals in our healthcare system into sharper focus than ever before, which in turn provides unprecedented opportunity to evaluate health policy decisions, as well as regulatory compliance, on a factual, quantifiable level. However,

achieving this potential is a profoundly complex undertaking that will require continuous learning and dialogue.

HFMA's Principles and Practices Board again applauds the IRS for its efforts to work with the healthcare community. As always, we are at your service to help ensure the final reporting rules strike an appropriate balance between oversight and reporting. If we can provide additional background material or perspective on this complex issue, please contact Richard Gundling, Vice President of HFMA's Washington, DC, office at (202) 296-2920.

Sincerely,

A handwritten signature in cursive script that reads "Craig L. McKnight".

Craig L. McKnight, CPA
P&P Board Chair

About HFMA

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Members' positions range from chief executive officer and chief financial officer to patient accounts manager and accountant.

HFMA is a nonpartisan professional practice organization. As part of its education, information, and professional development services, HFMA develops and promotes ethical, high-quality healthcare finance practices. HFMA works with a broad cross-section of stakeholders to improve health care by identifying and bridging gaps in knowledge, best practices, and standards.

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HFMA established the Principles and Practices Board in 1975 to reevaluate, clarify, and establish accounting principles and financial reporting practices to meet the unique characteristics of health service organizations.

The P&P Board consists of twelve members who have demonstrated technical competence in the industry and possess outstanding personal and professional qualities. At least six members must be employees of provider organizations; six or fewer members must work in organizations that serve the industry.

From: LtcTEW@aol.com
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Public comments to the Draft Revision Form 990 Instructions
Date: Monday, June 02, 2008 4:40:36 PM

Gentlemen:

One of the comments provided as posted on your site was that all 501c(3) organizations be audited annually. Considering the fact that many organizations, such as ours, are very small with a minimal income, the cost of an audit would be prohibitive. If the suggestion to require an audit were accepted, I would suggest that an exempt status be established for those organizations with an income below a certain level. I would hope that level would be somewhere at or above \$100,000. We were just over \$25,000 this year and an audit of \$3,000 or more would be a gift to the CPAs with no benefit to the community.

Tom Washington, Treasurer, Partners for a Healthier Honea Path

Get trade secrets for amazing burgers. [Watch "Cooking with Tyler Florence" on AOL Food.](#)

From: [Anne McLeod](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments on Draft Instructions
Date: Monday, June 02, 2008 6:19:09 PM
Attachments: [IRS comment letter on draft 990 instructions.pdf](#)

Anne M. McLeod

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**CALIFORNIA
HOSPITAL
ASSOCIATION**

*Providing Leadership in
Health Policy and Advocacy*

May 30, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Electronically Submitted

Re: Comments on Draft Form 990, Schedule H, and Selected Other Instructions

On behalf of the California Hospital Association (CHA) and the more than 450 hospitals, health systems, and individual members, I am pleased to offer comments on the draft instructions for Form 990, Schedule H for Hospitals, and selected other sections of the draft instructions.

We recognize the amount of work and preparation that the Internal Revenue Service (IRS) has put into the draft instructions, and CHA appreciates the opportunity you have given us to provide comments and discussion regarding these draft instructions. Our comments will focus particularly on Schedule H for hospitals, but we will also provide you with feedback on the draft instructions for Form 990, Schedule J (Compensation Information), and Schedule K (Tax-Exempt Bond Supplemental Information).

Schedule H:

Charity Care and Certain other Community Benefits:

Many CHA member hospitals are part of a hospital system or holding company structure. The draft instructions for Schedule H are not clear as to how organizations should account for community benefit activities being provided by related foundations or tax exempt organizations within a multi-entity health care system. The IRS should change the instructions and clarify how such community benefit activities should be reported, since activity that would have been conducted by the hospital but for the corporate structure should be reportable activity. The draft instructions are confusing because they indicate that Schedule H should aggregate information from disregarded entities and joint ventures.

Under "Reporting Benefits", the IRS removed bad debt expense from the total expense figure used in the denominator in column (f) "Percent of total expense." Consistent with accounting principles adopted by the American Institute of Certified Public Accountants, charges written off as bad debt are treated as an addition to expense rather than a deduction from revenue. Backing out bad debt expense from the total expense figure acknowledges that charges for bad debt are not "expenses", but rather a method of accounting for the absence of revenue in the income statement. Leaving bad debt expense in the total expense figure would artificially inflate the denominator. The IRS should clarify for hospitals that follow other standards, such as those of the Government Accounting Standards Board, will not need to make this adjustment.

Under Line 7, Column (c) instructions, the words "if desired" should be added to the end of the first sentence to ensure hospitals understand that these worksheets are optional.

Under Line 7, Column (f) instructions, the appropriate accounting term is “bad debt expense” throughout.

CHA believes that under the definition of “subsidized services”, certain types of services have been inappropriately excluded although they meet the criteria outlined. Providing emergency on-call services add to the costs of hospitals that must guarantee payment for uninsured patients that are treated in 24/7 emergency departments and trauma units. There is an increasing shortage of specialty-care physicians that are willing to provide on-call coverage for hospital emergency rooms. These costs should be reported when they meet the IRS criteria for subsidized services.

Part III for Bad Debt, Medicare & Collection Practices:

CHA urges the IRS to incorporate language from the original “highlights” document into the instructions themselves, explicitly recognizing that this section permits for the reporting of bad debt expense and information regarding Medicare revenues and costs, shortfalls or surpluses – as well as an explanation of why each of these should be treated as community benefit. This change will aid in the preservation of the IRS’ often publicly stated view of the importance of collecting this information and the opportunity it presents for the hospital community.

Under Section A, the IRS should include language in the draft instruction to clarify that organizations are not required to create footnotes in financial statements to satisfy this question. Many health care organizations do not include footnotes relating to bad debt expense in their financial statements.

The IRS has failed to provide any guidance to hospitals about the type of explanation it would find useful in better understanding which portions of Medicare underpayments constitute community benefit. Under Section B, Line 8, the following language, provided by the American Hospital Association, would be quite useful:

An organization’s rationale may have any reasonable basis, including the amount of the shortfall that might otherwise have been used to support the programs included in Parts I or II, an estimate of the income range of the organization’s Medicare patients, an estimate of the number of Medicare patients also eligible for the Medicaid program (dual eligibles), or whether the organization reports the amount of Medicare shortfall to any state government authority identified in Part IV, Line 8, or any other government authority.

CHA urges the IRS to allow hospitals the same options for accounting for Medicare costs as are available for other parts of Schedule H. To be consistent with the calculations on other parts of the form and provide a full accounting with respect to Medicare, Section B should capture the costs and revenues associated with all Medicare services and patients using the most accurate approach available.

Form 990:

The definition of “key employee” is too broad and should be refined. Hospitals and hospital systems can be large and complex and this definition of key employee does little to mitigate the burden associated with providing and reporting this information. Limiting the number of employees to be reported is one change that can be made to ease the burden yet capture the information intended to be collected by the IRS.

Schedule J – Deferred Compensation:

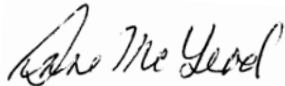
CHA urges the IRS to require that amount of unpaid, unvested deferred compensation be reported only in the year the compensation is paid to the recipient.

Schedule K – Supplemental Information on Tax-Exempt Bonds:

The draft instructions require organizations to complete the Schedule for each outstanding tax-exempt bond that both had an outstanding principal amount in excess of \$100,000 as of the last day of the tax year and was issued after December 31, 2002. Further, the instructions indicate that bond refundings after December 31, 2002 of pre-2003 issues should be treated as post-2002 issues and reported on Schedule K. The IRS should clarify that such reporting does not include information on expenditure and investment of bond proceeds or uses of bond-financed facilities occurring prior to 2003.

Thank you again for providing CHA with the opportunity to comment on the draft instructions for Form 990 and related schedules. We appreciate the IRS' efforts to garner feedback from California's hospitals and to become more familiar with the issues and concerns regarding the draft instructions. Please feel free to contact me if you have questions or need clarification. I can be reached at (916) 552-7536 or amcleod@calhospital.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne McLeod". The signature is fluid and cursive, with the first name "Anne" and last name "McLeod" clearly distinguishable.

Anne McLeod
Vice President, Reimbursement and Economic Analysis

From: [Kevin Barnett](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Input on 990 Revisions
Date: Monday, June 02, 2008 7:27:09 PM
Attachments: [Kevin Barnett IRS 990 comments 6-2-08.doc](#)

Dear Mr. Schultz,

Attached is a brief document with my comments on the IRS 990 Revised reporting instructions.

Sincerely,

Kevin Barnett, Dr.P.H., M.C.P.

June 2, 2008

Mr. Ron Schultz
Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Submitted by e-mail to: Form990Revision@irs.gov

Dear Mr. Schultz:

Thank you for the opportunity to provide the Internal Revenue Service with comments on the Draft Instructions to Schedule H released on April 7, 2008. My comments focus on two issues; 1) the exclusion of restricted and unrestricted grants from “direct offsetting revenue” claimed by nonprofit hospitals, and 2) interpretations of the subcategory “coalition building” in the community building category.

1. Exclusion of restricted and unrestricted grants from “direct offsetting revenue”

Page 7 of the April 7, 2008 instructions for Schedule H includes the statement “Direct offsetting revenue does not include restricted or unrestricted grants or contributions that the organization uses to provide community benefit.” This language creates a number of problems, including, but not limited to the following:

Lack of distinction between restricted and unrestricted contributions

There is a real and significant distinction between restricted and unrestricted contributions that is lost in these instructions and the associated 990 financial documentation process. Identical treatment of the two forms of grants/donations will make it impossible to ascertain whether the leadership of a nonprofit hospital makes an affirmative decision to allocate unrestricted funds for charitable purposes, when they could have just as easily made the decision to use the same funds to cover business-related expenses. It should be the role of the federal government to encourage these kinds of affirmative decisions by the leadership of nonprofit hospitals. The lack of distinction in the new 990 accounting framework, however, would likely undermine the motivation of nonprofit hospital leaders to operate in this manner.

Attribution of financial credit for charitable contributions

The allocation of resources by nonprofit hospitals to secure and administer restricted grants from philanthropic entities is an important expression of their charitable intent, and these internal resources are appropriately documented in current financial reporting. Successful efforts by nonprofit hospitals across the country in this regard have resulted in the flow of hundreds of millions of philanthropic dollars into low income, underserved communities. While the IRS should be lauded for giving attention to restricted grants in the 990 reporting process, allowing hospitals to claim these dollars as their own organization’s charitable contribution creates confusion in the attribution of financial credit. At the most basic level, it yields a “double count” of charitable dollar allocations; first by the foundation/donor, and then by the hospital. This concern is particularly relevant for hospital conversion foundations, which given their original articles of incorporation are charged with addressing the health needs of communities in their region. As such, a significant proportion of their allocations may flow through local nonprofit hospitals. It is both likely and appropriate for the philanthropic community to oppose this approach to financial accounting.

This approach to financial accounting is also subject to a variety of “gaming” strategies, where funds could be circulated among separate legal entities with a single system. While such practices would be expected to be the exception rather than the rule, their likely eventuality would present the IRS with an array of complex monitoring challenges.

Of equal importance, the opportunity to claim financial credit for large restricted grants from foundations and other donors would likely contribute to a de-emphasis on strategic allocations of hospital operating revenues and

unrestricted donations. A core question in the development of new rules for nonprofit hospital financial reporting should be whether the new rules support or undermine the underlying charitable intent of tax exemption. This particular rule clearly undermines that intent.

Inequities in grant seeking capacity

The exclusion of restricted grants as direct offsetting revenue will greatly enhance the volume of charitable contributions documented by large, research-based nonprofit medical centers. These institutions possess the resources, expertise, and stature to secure major restricted grants from the full spectrum of public and private philanthropic interests. As such, they hold a considerable advantage over community hospitals in securing these kinds of resources. In many cases, community hospitals may be more substantively engaged with diverse community stakeholders and focused on practical strategies to improve health status and quality of life in their communities. As such, this new rule gives an inappropriate advantage to research-based nonprofit medical centers. Given the volume of external dollars secured by many of institutions, they may logically conclude that little effort is required to strategically allocate internal dollars. Again, the new rule undermines the underlying charitable intent of tax exemption.

PROPOSED ALTERNATIVE

One option for consideration that will encourage and build upon the intent to encourage nonprofit hospitals to secure external resources to invest in local communities would be to create a reporting line item entitled “Leveraged Resources.” In this category, nonprofit hospitals could document not only restricted grants but other kinds of community assets mobilized through the engagement of diverse community stakeholders. This category would not be documented at the hospital’s direct financial contributions, but inclusion in the general reporting process would encourage this form of outreach and engagement.

2. Interpretation of the category “coalition building” in Part II Community Building

I have commented previously on Part II Community Building, and the importance of moving towards inclusion in future financial reporting. A key consideration in the reasoning and strategy for inclusion in the future should be a requirement for nonprofit hospitals to document how their investment in these areas will contribute to ultimate measurable improvements in health status and quality of life. In most cases, nonprofit hospitals play a supportive/facilitative role, and through their efforts leverage substantial resources from other key community stakeholders. As such, they represent a highly efficient and effective use of limited charitable resources.

At this juncture, I’d like to address the inclusion of “coalition building” as a category. I’ve received numerous inquiries from colleagues in recent months who express concern that the exclusion of community building in general and coalition building in particular reflects an intent by the IRS to discourage the development of ongoing partnerships with diverse community stakeholders to address unmet health needs. It has been my guidance thus far to encourage the documentation of community partnership development into particular content categories that are the focus of the partners or to community benefit operations. I am concerned, however, that one of the unintended consequences of the new IRS 990 will be to discourage these important partnership activities.

One option would be to remove coalition building as a category from community building, while providing clear encouragement and guidance on how associated costs are documented (e.g., as I have suggested in responses to inquiries). I suggest this in part because the term “coalition building” represents more of a process, or means, rather than the intended end (e.g., physical improvements, workforce development).

Thank you for the opportunity to provide input to the Internal Revenue Service on the 990 revision process for nonprofit hospitals.

Sincerely,

Kevin Barnett, Dr.P.H., M.C.P.
49 Vista Lane
Alamo, CA, 94507

From: [Chip M. Watkins](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments on Form 990 Instructions
Date: Monday, June 02, 2008 8:21:35 PM
Attachments: [FR Coalition Comments \(May 2008\).doc](#)

Attached are comments—addressing matters arising in connection with Schedule G and other fundraising-related issues—that I am submitting on behalf of a coalition consisting of the Association of Fundraising Professionals International, the Direct Marketing Association Nonprofit Federation, the Council for the Advancement and Support of Education, and The Association of Direct Response Fundraising Counsel.

Thank you for the opportunity to address these matters with you. Should you wish, we would be happy to meet with you at your convenience to discuss any questions you may have regarding these issues, and in particular those arising in connection with gifts of non-cash property in connection with fundraising events.

Sincerely,

Charles M. (Chip) Watkins
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W., Suite 1000
Washington, DC 20006
Tel: (202) 785-9500, ext. 34
Fax: (202) 835-0243
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Comments from the Fundraising Coalition regarding Schedule G—June 2, 2008

“TRIGGER” FOR SCHEDULE G

In our review of Form 990 and Schedule G, we identified a potential issue relating to the “trigger” for Schedule G. As we considered changes to column (v) of the table in Schedule G, Part I. relating to the amounts that should be reported as “fees,” we realized that the “fees” that trigger the requirement to file Schedule G (Part IX, line 11e) also needed to be addressed. Otherwise, if only “fees” (separately labeled as such) were taken into account for “trigger” purposes, then those charities who pay fundraisers only through a “package price”—e.g., “we will mail 300,000 letters for \$50,000 plus postage”—would not report any “fees” on line 11e, and so would not file Schedule G. There are two ways to address this:

First, the “trigger” question in Part IV, line 17 could be changed, or a new question added, to refer to expenses paid to a professional fundraiser. However, this would create a substantial change in Part IV, which the Service may be unable to accommodate for the 2008 form.

Alternately, the instructions for Part IX, line 11e and line 24 could be revised in a manner that is consistent with the concept in the column (v) of the table in Schedule G, Part I. Although it has the disadvantage of not being intuitive—“expenses” are not immediately thought of as “fees”—we have adopted this approach here, principally because we understand that the Service cannot now change the trigger questions in Part IV.

Instructions for Form 990, Part IX, line 11e: To create consistent labeling and cross-referencing, we recommend inserting “professional” before “fundraising services” in the first sentence, and clarifying the sentence by eliminating the unnecessary examples. (Because “professional fundraising services” is a defined term, readers should refer to the definition of “professional fundraising services” in the glossary.) The revision of the sentence referring to separate identification of expenses is consistent with our comment below regarding Schedule G, Part I, line 2b, Column (v). The instruction would then read as follows:

Line 11e. Professional Fundraising Fees. Enter the total amount of fees charged for professional fundraising services. “Professional fundraising fees” includes amounts paid by the organization for such expenses as printing, paper, envelopes, postage, mailing list rental, and equipment rental if they are not separately identified as expenses by the fundraiser, or if the fundraiser does not separately identify a fee. If the fundraiser separately identifies its fee and these expenses, these expenses should not be reported on line 11e, but should be reported on line 24 as “other expenses.”

Instructions for Form 990, Part IX, line 24

A corresponding change to the instruction for Part IX, line 24, should also be made. The second sentence of that instruction should be revised to read as follows:

Include payments by the organization to professional fundraisers of fundraising expenses such as printing, paper, envelopes, postage, mailing list rental, and equipment rental only if the professional fundraiser separately identifies both its fee and such expenses. Otherwise, report all amounts paid to the fundraiser on line 11e.

SCHEDULE G

PART I – FUNDRAISING ACTIVITIES

Line 1: To make information on methods employed more meaningful for all users of Form 990, with little additional burden imposed on filers

Change the caption (on Schedule G itself) to read:

1 Indicate whether the organization raised **a significant amount of** funds through any of the following activities. (Check all that apply--see instructions.)

Instructions: Revise the instructions for Part I, Line 1 to read as follows:

Line 1. Check the box in front of each method of fundraising used by the organization to raise funds during the year if the organization spent at least 15% of its fundraising expenditures on the method; if the method produced at least 15% of the organization's contributions received during the year; or if volunteers conducted the activity on at least 60 calendar days during the taxable year.

Comment: The purpose of this change, together with the change we propose in the Instructions, is to highlight the most significant methods of fundraising used by the charity. Otherwise, *all* charities should check the four boxes in the left-hand column, and many charities will check at least two of the three boxes in the right-hand column. The proposed change would provide more meaningful information for the IRS, as well as other users of Form 990, with little additional burden on reporting organizations.

Part I, Line 2a:

Change the caption (on Schedule G itself) to read:

Did the organization have a written or oral agreement with any individual (including officers, directors, trustees or key employees listed in Form 990, Part VII) or entity to perform **professional fundraising services**?

Comment: The “phrase “to perform” is more specific than “in connection with”. There is no definition of “professional fundraising activities.” There is a definition of “professional fundraising services,” and this focuses the reporting EO’s attention on the organizations for which reporting is required in the table in Line 2b.

The phrases “in connection with” and “activities” suggest a breadth and depth of reporting on vendors that is not actually required here. See the definition of “professional fundraising services.”

Revise the instructions for Line 2a to read as follows:

Line 2a. Check “Yes” if during the year the organization had an agreement with another person or entity to provide **professional fundraising services**. Do not include officers, directors, trustees or key employees who conduct fundraising activities in their capacity as an officer, director, trustee or key employee of the organization, such as a development officer.

The organization must report any agreements for professional fundraising services meeting the thresholds *regardless of the form of the agreement* (i.e., whether written, oral, or course of dealing). For example, an organization that has a written contract with a business to supply printing and mailing services (only) would nevertheless report that agreement here if the business in fact *also* provided **professional fundraising services** (e.g., advice on copywriting and graphic design; or how much, how often, and to whom to mail).

Professional fundraising services include services performed for the organization requiring the exercise of professional judgment or discretion consisting of planning, management, the preparation of materials (e.g., direct mail solicitation packages) or the provision of advice and consulting regarding solicitation of contributions; or the direct solicitation of contributions. However, **professional fundraising services** do not include purely “ministerial” tasks, such as printing, mailing services, or receiving and depositing contributions to a charity, such as the services provided by a bank or “caging” service.

Comment: The definition of “fundraising activities” is deleted as unnecessary at this point.

Part I, Line 2b: Change the caption (on Schedule G itself) to read:

If “Yes” to line 2a list the ten highest paid individuals or entities (fundraisers) who were each paid more than \$5,000 by the organization in the taxable year for **professional fundraising services**. Form 990-EZ filers are not required to complete this table.

Comment: Only the first sentence has been changed. The reference to “agreements” is unnecessary. The change to “more than” from “at least” is for consistency.

Part I, Line 2b [all columns]:

Instructions: The instructions for each column of Line 2b should start with:

Column ().

This is consistent with the instructions for the columns in Schedule M.

Part I, Line 2b, Column (i):

Instructions: Revise the instructions by deleting the paragraph defining “professional fundraising services,” because this definition has been inserted in the instructions for Line 2a.

Part I, Line 2b, Column (ii):

Instructions: Revise the instructions to read as follows:

Column (ii). Enter the type(s) of fundraising activities with respect to which the professional fundraiser performed services.

Report the activity consistently with terms used by the organization in the management of its fundraising program. For example, if an organization contracts with a single fundraiser to advise on and coordinate all of its direct mail fundraising, it might enter “consults on direct mail program.” If a fundraiser were retained solely to recruit new direct mail donor, it might enter “consults on direct mail acquisition campaign.” If a fundraiser were hired solely to make telephone calls to renew lapsed donors, it might enter “conducts telephone campaign for donor renewal.” If a consultant were hired to perform data analysis for all aspects of an organization’s public solicitation, it might enter “provides database consulting for direct mail, telephone, and email.”

Part I, Line 2b, Column (iii):

Instructions: Revise the instructions to read as follows:

Column (iii). If either the fundraiser, its employees or its agent has custody or exercises control of contributions, check “yes.” For this purpose, “custody” means possession of the funds, and “control” means the authority to use, or direct or control the use of, the funds. Describe the custody or control arrangement in Schedule O.

Example: A fundraiser hires a cashiering company (“cage”) to receive, account for, and deposit proceeds from a direct mail campaign. Since the cage is its agent, the fundraiser has custody of contributions. The organization should check “yes.”

Example: An agreement with a fundraiser provides that proceeds are deposited in a separate bank account, or an escrow account, and (in either case) the fundraiser’s

signature is required for the release of funds OR an agreement provides that the fundraiser may determine the priority of payment of invoices from vendors in connection with the fundraising campaign. In either case, the fundraiser is exercising control of contributions and the organization should check “yes.”

Part I, Line 2b, Column (iv):

Instructions: Revise the instructions to read as follows:

Column (iv). Enter the gross receipts connected to the services provided by the fundraiser listed in (i) and received by the organization, or by the fundraiser on the organization’s behalf, during the taxable year.

Column (iv) provides a means of reporting the relationship (if any) of fundraising revenues to fees paid to fundraising professionals whose services either produced, or aided in the production, of those revenues. However, organizations are not required to make additional attributions or allocations of revenues beyond the accounting and fundraising management reporting performed internally by the organization.

If the fundraiser were retained to manage the organization’s overall direct mail campaign, as reported in column (ii), then the gross revenue from all direct mail for the taxable year would be reported in column (iv). If the fundraiser were retained solely to consult with respect to new direct mail donor acquisition, then only the gross revenues from the new donors would be reported in column (iv).

In contrast, when a fundraising consultant is engaged to, for example, perform analyses of an organization’s direct mail database, the consultant’s work is not directed toward a particular component of the direct mail program. In such a case, the organization should report its gross proceeds from direct mail in the column (iv) for this fundraiser (whether or not it might be reporting the identical amount for another fundraiser with general responsibility for direct mail).

Similarly, a single fundraising consultant might be hired to, for example, provide fundraising messages for direct mail, e-mail, and telephone solicitation. The organization would report gross proceeds from all three channels in column (iv) for this fundraiser.

Finally, a professional fundraiser may deliver services in the taxable year and be properly reported in Line 2b but have no receipts to report in column (iv). For example, an organization might retain a fundraiser to conduct a feasibility study for a capital campaign. The campaign, if there were to be one, would be conducted in, and produce receipts in, subsequent taxable years. Likewise, a fundraiser might be hired to plan and produce programming for a television (or other mass media) campaign. Fees (possibly substantial ones) would be properly reported in the taxable year, but there might be no receipts to report until subsequent years when the programming actually airs. In each case, the organization may properly report “–0–” in column (iv).

TIP: The totals from column (iv) need not reconcile with other lines on the Form 990. An organization may properly report identical gross receipts for more than one fundraiser. In addition, the total for column (iv) may exceed the total funds raised by the organization and reported on any one or more of Form 990, Part VIII, line 1a through 1f. There also may be instances where the *total* for column (iv) is accurately reported as “-0-”.

Part I, Line 2b, Column (v):

Instructions: Revise the instructions to read as follows:

Column (v). Enter the dollar amounts in fees paid to or fees withheld by the fundraiser for its professional fundraising services. If the arrangement does not include a designated amount for fees, then the organization must report the gross amount paid to (or withheld by) the fundraiser.

If the arrangement provides for the payment of fees and also for the payment of fundraising expenses, such as printing, paper, envelopes, postage, mailing list rental, and equipment rental, the organization must report such amounts paid during the year in Schedule O, describing how the arrangement distinguishes payments for professional fundraising fees from expense reimbursements. Also describe in Schedule O whether the organization entered into any arrangements with fundraisers under which payments were made exclusively for such expenses and no payment was made for professional fundraising services.

Part I, Line 2b, Column (vi):

Change the caption (on Schedule G itself) to read:

“Amount retained by (or paid to) organization.”

Comment: This makes the language parallel with the caption for column (v).

Part I, Line 3:

Instructions: Revise the instructions to read as follows:

Line 3. If the organization is registered, licensed, or has been notified that it is exempt from registration or licensing, in all states requiring registration or licensing for solicitation, it may answer “All States.”

Comment: Only 39 states require charities and (in some states) §501(c)(4) EOs to register or be licensed to solicit contributions.

PART II – FUNDRAISING EVENTS

There are currently overlapping and conflicting definitions of “event” and “special fundraising event.” We understand that Part II is now titled “Fundraising Events.” For this reason, we propose consolidating these two definitions into one—**to be included in the Glossary**—to read as follows:

Fundraising Event

Any event (other than an event conducted in the course of a trade or business that is regularly carried on) at which the organization sells donated goods or services (such as an auction), or for which the organization charges a fee (that may exceed the fair market value of comparable events) to attend or participate, including, but not limited to, a dinner and/or dance; a spectator sports event; an entertainment or artistic performance (such as a concert) or display; a participatory athletic event, such as a “walk-a-thon,” golf tournament, or bike ride; a carnival; or a tour of one or more homes, gardens, or other places of interest. A fundraising event does not include a solicitation campaign or other event that generates only contributions, or the sale of merchandise that is not donated, even if the sale is conducted only annually. A fundraising event also does not include the sale of goods or services of only nominal value; or sweepstakes, lotteries, or raffles in which the prizes have only nominal value.

This definition should be inserted in the instructions for Part II in place of the definition of “Events” that presently appears on Page 4. In addition, the instructions for Part II should otherwise be conformed to use only the term, “fundraising event.”

“Gross income” vs. “gross receipts”

Form 990, Part VIII, line 8a refers to “gross income” from fundraising events, while Schedule G, line 3 and its instructions refer to “gross revenue.” This terminology should be made consistent. We have no preference regarding which term should be used.

Noncash contributions

The instructions do not clearly indicate how to treat two common classes of noncash contributions given in connection with fundraising events. First, businesses may donate goods to be used in the event, e.g., floral centerpieces for tables at a banquet, the food that is served, or gifts for attendees (goodie bags, or “swag”). Second, in connection with auctions, donors give items to be sold by the charity at the auction.

As to both gifts of goods to be used in an event (other than goods to be auctioned), and goods to be auctioned, there are three potential treatments, all of which have a certain logic, and that present the IRS with different policy choices.

In all cases below, both those regarding goods to be used in an event, and charity auctions, we assume that noncash gifts would be reported on Part VIII, line 1g and Schedule M if such reporting is otherwise required (by the \$25,000 threshold, or if Art, etc., is received).

1. The first approach is both most logical and consistent with the present approach to reporting contributions from fundraising events. However, it also imposes significant recordkeeping and reporting burdens on charities and other reporting organizations.

Gifts of goods to be used in the event (other than goods to be auctioned) would be reported on Part VIII, line 1f, and should not be reported on Part VIII, line 1c as contributions from fundraising events, or on Schedule G, Part II line 3 (and therefore not on Part VIII, line 8a), as gross receipts from the event. The same values would be reported as fundraising expenses in Part IX, line 24 (other expenses).

Likewise, a gift of money to pay for such goods, *e.g.*, centerpieces, or the payment for such goods directly to the vendor by a donor (for the benefit of the charity) should be reported on Part VIII, line 1f.

In the case of goods to be auctioned, the fair market value of donated goods (but not services) is reported on Form 990, Part VIII, line 1f. When goods are sold, the sale price (up to the fair market value) and the amount recorded on line 1f would be reported on Part VIII, lines 8a and 8b, respectively. The amount received by the charity for services donated for auction would be reported as miscellaneous revenue on Part VIII, line 11. Any excess of payment for the goods (or services) over the fair market value (by the purchaser) is an additional contribution reported on line 1c.

The rationale for this treatment is that gifts of goods to be used in the event are gifts that make the event possible, and are not gifts that arise *from* the event in the form of payments for the right to attend the event. (Of course, if a donor's gift of goods to be used in the event is credited to the donor as a payment for the right to attend the event, then this rule would not apply, and the value of the gifts would be treated as gross receipts from the event.)

2. **The second approach is similar to the first, but treats the contributions of goods to be used in the event or to be auctioned as being gross receipts from the event. This is different from the current practice.**

Gifts of goods to be used in the event (other than goods to be auctioned) would be included in gross receipts from the event (at fair market value), reported in Form 990, Part VIII, line 1c (except to the extent their value is treated by the charity as payment for the right to attend the fundraising event, which is reported on Part VIII, line 8a). The same amount would be reported on Schedule G, Part II, line 2 and as an “other direct expense on Schedule G, Part II, line 7, if Schedule G is otherwise required to be filed.

In the case of goods to be auctioned, the donated goods are reported as contributions from a fundraising event and reported on line 1c, and the amounts paid by purchasers for goods or services are reported as “gross income” (or “gross receipts”) in Part IX, line 8a or 11, respectively. The amount reported on line 1c with respect to donated goods is also reported on line 8b). The charity also reports the amounts in the appropriate lines of Schedule G, Part II if it is required to file Schedule G.

3. **The third approach simplifies recordkeeping and reporting by disregarding gifts of goods to be used in a fundraising event, and by treating the selling price of goods and services donated for auction as the fair market value.**

Gifts of goods to be used in the event (other than goods to be auctioned) would be disregarded altogether, because they are likely to be relatively insignificant in value compared to the gross receipts from the event, they have no value to the charity apart from the fundraising event, and the charity might not know their value. In this case, the charity would not report the value of such gifts in Form 990, Part I, and Part VIII, and would not report their value in Part IX, or on Schedule G, Part II.

Comment: This would minimize the reporting burden on affected charities for what are usually fairly insignificant contributions and expenses. However, this approach would also introduce horizontal disparity between organizations that use cash to pay for similar items, and those that receive donated items.

In the case of goods to be auctioned, the amount for which contributed goods and services are sold is reported on Form 990, Part VIII, line 1c and line 1g. The underlying assumption for this option is that the donated product or service is valued by the market, and the fair market value of any donated product is normally the amount it sells for at auction.

Comment: This option simplifies the recordkeeping and reporting burden on smaller charities. As long as donated goods continue to be reported on line 1g and (if required) on Schedule M, the Service would not lose data on noncash gifts. However, this approach introduces a disparity between the “contributions” reported on line 1c, and the fact that, in most cases, no part of the amount paid for an item at auction is a true gift, as most sales are at or below “fair market value.”

Of course, until the Service decides how it wishes to require charities to report gifts of goods to be used in as fundraising event, we cannot propose language for the instructions. Regardless of which alternative is selected, the instructions for Schedule G, Part II also need to be clarified, and we will be pleased to assist with the revisions to the instructions once the Service selects an alternative.

SCHEDULE M “TRIGGER”

1. The instructions for the Schedule M “trigger,” **Part IV, line 29**, should be clarified to remind reporting organizations that items donated for a charity auction must be taken into account in determining whether Schedule M is required to be filed.
2. In addition, why is the phrase “regardless of whether they reported such amounts as non-cash contributions in Part VIII, line 1g” included in the instruction? This suggests that some non-cash contributions are not required to be reported in Part VIII, line 1g.
3. There is also no apparent reason for the phrase “or contributions to the capital of the organization.”

Accordingly, we recommend that the instruction for Part IV, line 29 be revised to read as follows:

All organizations are required to answer “Yes” to line 29 if, during the year, they received **non-cash contributions** (including items donated for a charity auction) whose total value was more than \$25,000. The total value of these contributions is required to be reported in Part VIII, line 1g, regardless of whether the total value was more than \$25,000. For purposes of determining the total value, each item (or group of items) donated should be valued as of the date of the gift, based on the **fair market value** of each item (or group of items). Do not report any value for contributions of services.

4. Add to the Glossary the following definition of **fair market value**, taken from Treas. Reg. §1.170A-1(c)(2) and (3):

Fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers.

If a donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price, the value of the gift is not the usual selling price but is the amount for which the quantity of property contributed could have been sold by the donor at the time of the contribution.

From: [Chip M. Watkins](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Form 990 Comments
Date: Monday, June 02, 2008 8:27:50 PM
Attachments: [CMW Comments \(May 2008\).doc](#)

Attached are comments that I am submitting with respect to the draft Form 990 instructions issued by the TE/GE Division in April.

Charles M. (Chip) Watkins
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Comments submitted by Charles M. Watkins—June 2, 2008

FORM 990, Part II: The instructions should clarify the scope of authority being granted if the EO authorizes the IRS to “discuss this return” with the preparer. Assuming this is not the equivalent of a Power of Attorney (Form 2848), exactly what authority to bind the EO is being conferred on the preparer if he or she responds to factual questions about the entries on Form 990? I recommend that a new paragraph be added at the end of the instructions for Part II, to read as follows:

If the organization authorizes the IRS to contact the paid preparer to discuss the return, statements made by the paid preparer to the IRS do not bind the organization. A paid preparer’s statements can only bind the organization if the organization has executed Form 2848, *Power of Attorney and Declaration of Representative*, naming the paid preparer as its attorney-in-fact, and delivered it to the IRS.

Form 990, Part VII: The instructions (on page 3 of 14) state that for officers and other employees, “reportable compensation” is the amount reported in Box 5 of Form W-2. Box 5 of Form W-2 is the box used by employers to report “Medicare wages and tips.” <http://www.irs.gov/pub/irs-pdf/fw2.pdf>.

This produces an interesting effect in the case of (1) ministers of the gospel who are performing services in the exercise of ministry, and (2) members of religious orders who have not taken a vow of poverty. Their “Medicare wages” are “-0-“, because although they are typically common law employees (and their compensation, net of any housing allowance excludible under §107, is otherwise reported in Box 1), they are treated as if they were self-employed for purposes of Social Security taxes. §3121(b)(8)(A). Thus, their compensation is reportable as net income from self-employment, and is subject to self-employment tax under §1401 *et seq.* See §1402(a)(8) and §1402(c)(4).

See also IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*. <http://www.irs.gov/pub/irs-pdf/p517.pdf>

From: [Adam P. Cohen](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments on draft instructions to new Form 990
Date: Monday, June 02, 2008 9:17:52 PM

June 1, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

VIA Email to Form990Revision@irs.gov

**Schedule D – Supplemental Financial Information, Parts XI, XII, and XIII
Reconciliation of Change in Net Assets, Revenues, and Expenses from
Form 990 to Audited Financial Statements**

I recommend that the requirement to complete Schedule D –, Parts XI, XII, and XIII Reconciliation of Change in Net Assets, Revenues, and Expenses from Form 990 to Audited Financial Statements be expanded to **include organizations that prepare financial statements on any method of accounting; whether those financial statements are audited, reviewed, compiled or internally prepared.**

These reconciliations assist the public and IRS in reconciling differences between “the books” or financial statements and the information return for organizations that are not both audited and follow GAAP. They also aid the entity’s management and the preparer in reviewing the Form 990 versus the entity’s financial statements and internal reports.

Many not-for-profit organizations – particularly those 501(c)(x) entities that are not public charities subject to single audit or state public charity registration - do not obtain audits of their financial statements, unless required by third parties. Other entities use modified cash basis or other methods of accounting for their financial reporting or “books of account”. All entities above a certain size should be required to prepare Parts XI, XII and XIII to Schedule D. I recommend that the threshold for filing Form 990 is an appropriate threshold for these parts.

The instructions to business income tax returns do not use financial reporting selected by the taxpayer as a criterion for determining whether

Schedules M-1, M-2, or similar schedules are required to be completed. Form 1120, for example, sets an asset threshold of \$250,000.

In adding the similar schedules to the existing Form 990, IRS recognized that differences in revenues may be offset by comparable difference in expenses and that reconciliations of gross receipts and gross expenses would be most useful. Because of the variety and complexity of financial reporting methods and formats the reconciliations of changes in net assets, revenues and expenses are important information.

Excerpt from Draft Instructions to the new Form 990:

Complete Part XI, Part XII, and Part XIII if the organization answered "Yes" to Form 990,

Part IV, *Checklist of Required Schedules*, line 12.

An organization required to complete Parts XII and XIII is also required to complete part XI.

If the organization did not receive an audited financial statement for 2008 (or the fiscal year for which it is completing this Form 990) and prepared the return in accordance with SFAS 117, it does not need to complete Parts XI, XII or XIII.

Use the reconciliation statements of Parts XII and XIII to reconcile the differences between the revenue and expenses reported on the organization's audited financial statements prepared in accordance with SFAS 117 and the revenue and expenses reported on the organization's Form 990.

Sincerely,

Adam P. Cohen CPA, LLC
81 South Main Street
West Hartford, CT 06107-2405

860-521-6400 phone

U.S. Treasury Circular 230 Disclosure: Any statements contained herein are not intended or written by the above signed individual to be used, and nothing contained herein can be used by you or any other person, for the purpose of avoiding penalties that may be imposed under federal tax law.



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June 2, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Redesigned Form 990 Instructions

As a health care system of hospitals, home care agencies and multiple clinics, Adventist Health appreciates the IRS' effort to redesign the Form 990 and its related instructions. The project has been extensive and we recognize the vast resources used to complete this project. We also welcome the opportunity to provide input on the instructions. Following are our comments for your consideration.

GENERAL COMMENTS

Consistency throughout instructions for references to Internal Revenue Code, Treasury Regulations, other IRS material – e.g.,

Form 990 Core, **General Instructions, D. Accounting Periods and Methods, ACCOUNTING METHODS**, Accounting method change. The last sentence refers to Internal Revenue Code when other references throughout the instructions preface the Code number simply with the word “section.”

Reference to Code and Regulations – e.g.,

Throughout instructions at the end of a paragraph or section the reader is directed to “See ...” for additional information. Many preparers do not have immediate access to the material cited. Therefore, we encourage the IRS to incorporate complete definitions, additions to the glossary, or other detailed narrative as part of the body of the instructions to minimize the untrained preparer's need to search out other resources to be able to grasp the intent of the question on the return.

FORM 990 CORE

General Instructions, D. Accounting Periods and Methods, ACCOUNTING METHODS, Accounting method change. –

The requirement to provide reconciling information required by IRC section 481(a) seems to be beyond the scope of the Form 990. Section 481(a) applies to taxable income. We would suggest that if reconciliation is needed for an accounting method change, that it best be disclosed on Form 990-T where the taxable income is reported rather than on the Form 990. If the intent of the instructions is to apply section 481(a) to all income of a tax-exempt organization, clarification should be added to the instructions.

General Instructions, E. When, Where, and How to File, Electronic filing. –

At the end of the first paragraph, we recommend cross-referencing to the Form 990 Core, Part V, Line 2b Note. The Note by itself appears to be misleading when it states an entity “may be required to e-file the return.”

Specific Instructions, Part III Statement of Program Service Accomplishments

First paragraph uses the word “major” and other areas of instructions use the word “significant.” For consistency, we recommend that the word “significant” be used throughout the instructions when addressing program services or activities. Also, the word “significant” should be included in the glossary and defined.

The instructions appear to have mixed program services with public benefit measurement tools such as charity care. The example on charity care does not, in our opinion, reflect a program service, but rather a classification of users of program services. We would suggest that a better example would be a “significant activity,” such as acute care hospital, rural health clinics, or home care. The glossary also needs to be updated to reflect any change incorporated in the instructions.

Specific Instructions, Part III Statement of Program Service Accomplishments, Line 1. Mission. –

Last sentence should have word “statement” after “mission.”

Specific Instructions, Part IV, Checklist of Required Schedules, Line 12. Audited financial statements. –

Organizations for which individual entity audited financial statements are not issued but which are a component of combined or consolidated audited financial statements would seem to be precluded from responding affirmatively on this line. Sufficient generally accepted auditing procedures are not performed at the individual entity level to enable an independent audit report to be issued. Additional guidance is needed in the instructions for this question.

Specific Instructions, Part V, Statements Regarding Other IRS Filings and Tax Compliance, Line 2b. Employment tax return filings. –

Cross-reference to **General Instructions, E. When, Where, and How to File**, Electronic filing.

Specific Instructions, Part V, Statements Regarding Other IRS Filings and Tax Compliance, Line 8. Disclosure of Excess Business Holdings. –

Rather than referring to Form 4720, we recommend that the term “excess business holdings” be added to the glossary.

Specific Instructions, Part VI, Governance, Management, and Disclosures, Line 15. Process for determining compensation. –

First bulleted paragraph – Instead of citing Reg. § 53.4958-6(c)(1)(iii), we suggest that it be quoted here.

Specific Instructions, Part VI, Governance, Management, and Disclosures, Line 16. Joint venture policy. –

Item 1 – We suggest that IRC §§512(b)(1)-(5) be summarized here.

Specific Instructions, Part VI, Governance, Management, and Disclosures, Line 18. Public availability of Forms 1023/1024, 990, and 990-T. –

The instructions (and the form itself) make no accommodation for entities that do not have their exemption applications available for public inspection and which are not required to if they had no copy on July 15, 1987. The instructions should clearly state that if the reporting organization met this requirement, a “yes” response is appropriate.

Specific Instructions, Part VI, Governance, Management, and Disclosures, Line 19. Public availability of other documents. –

The instructions do not provide guidance on how to address a “no” response to this question. Some clarifying language would be useful. For example, “If the organization does not make these documents publicly available, on Schedule O simply state such. Further explanation is not required.”

Specific Instructions, Part VI, Governance, Management, and Disclosures, Line 20. Location of books and records. –

The instructions ask for the name of the person who possesses the books and records. Organizations have departments that maintain these records. We

suggest that an alternative to providing a name be acceptable for this purpose. Due to personnel turnover a title or department is more likely to result in properly locating the records, than the name of an individual would.

Specific Instructions, Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors, Section A, Officers, Directors, Trustees, Key Employees, Highest Compensated Employees –

Key employee (2)- The addition to the key employee definition of an individual who “manages a discrete segment or activity of the organization” is a broadening of the individuals who are to be included on the return. The records of an exempt organization are usually not maintained in a manner to capture this information. Significant time will be required to determine what a “discrete segment or activity” is. A 5% or greater test would have to be run on each category stated in the instructions – activities, assets, income, expenses, and capital expenditures. The process of identifying individuals would have to go another step by looking at wages and management responsibility, not easily done only with payroll records, and would require manual review of the job responsibilities.

A definition of organization manager is used for excess benefit transactions in Regulation §53.4958-1. Using the same definition for a “key employee” would result in consistency with other material contained in the instructions. However, if the IRS retains the broader definition, generally accepted accounting principles use 10% for segment reporting (the IRS has already recognized this standard for other Code and regulation purposes), and at a minimum the IRS should use this figure rather than the 5% as currently written.

Year-to-year fluctuations in the activities of a “discrete segment or activity” could result in adding or dropping “discrete segments or activities” causing additional analysis to be needed to determine the appropriateness of such a change. Guidelines, such as those used in generally accepted accounting principles, should provide for reporting under such fluctuations.

We concur with the American Hospital Association that a tighter control standard, a higher percentage threshold, and an upper limit on the number of employees to be reported should be incorporated into the instructions. Additionally, if the broadened disclosure is retained, a definition of “discrete segment or activity” should be aligned with the Form 990 Core Part III where the term “significant activity” is used. An addition to the glossary would be appropriate. The term “key employee” in the glossary would also need to be updated for any changes to the instructions.

Reportable Compensation. – The instructions are difficult to read and we suggest a rewrite with reference to Schedule J sections that discuss similar material.

The **TIP** does not address corporate officers who do not receive a W-2 from the reporting organization as the officers are employed by another organization. We are not certain the preparer is enlightened with this section.

The first bullet point after the **TIP** section appears to be incorrectly written. Suggestion –

“Amounts reported in Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC issued to the individual by the organization; and (delete remaining “all related organizations.”)

Amounts reported in Box 5 of Form W-2 and /or Box 7 of Form 1099-MISC issued to the individual by each related organization. Disregard payments from a related organization if below \$10,000.”

The last paragraph of this section is difficult to read and understand. We recommend referring to Schedule J, Part II in place of this narrative.

Column (C). Position, Current and former. – Third paragraph would be easier to understand if rewritten. Our suggestion: Check the “Former” box only if the organization reported (or should have reported, applying the instructions in effect for each of five prior years) an individual as an officer, director, trustee, key employee, or one of the five highest compensated employees on any of the organization’s prior five Forms 990, 990-EZ or 990-PF.”

Specific Instructions, Part IX Statement of Functional Expenses, Line 6, Compensation, Not Included Above, to Disqualified Persons –

Refer to Appendix G and glossary instead of Code sections.

Specific Instructions, Part IX Statement of Functional Expenses, Line 14, Information Technology –

Line 7, Other salaries and wages will include compensation for this group of activities if the organization employs its own staff for this function. The instructions do not indicate if these costs are to be excluded from Line 14 or Line 7.

Specific Instructions, Part IX Statement of Functional Expenses, Line 16, Occupancy –

Mortgage interest is included in the instructions for Occupancy. This term needs to be defined. Nowhere in the instructions is tax-exempt debt financing interest addressed and we would advocate that this interest would not be

included in Occupancy since projects include many capital items that are not related to purchases of land, buildings, and building and land improvements.

Specific Instructions, Part X Balance Sheet, Line 4. Accounts Receivable, Net. –

The first sentence says to reduce total accounts receivable “by any allowance for doubtful accounts.” We recommend adding the “and/or any other contra-asset accounts commonly used in the reporting organization’s industry.” The second sentence uses the term “not significant,” without a definition. We recommend defining this term in the instructions.

Specific Instructions, Part X, Balance Sheet, Line 6, Receivable from Other Disqualified Persons. -

Reference to IRC §§ 4958(f)(1) and 4958 (3)(B) should be replaced with cross-reference to Appendix G and glossary.

Specific Instructions, Part X, Balance Sheet, Line 10a, Land, Buildings, and Equipment. –

“Enter cost or other basis” conflicts with the form as the form says, “cost basis.”

Specific Instructions, Part X, Balance Sheet, Line 11, Investments: Publicly Traded Securities. –

“Enter the total (insert the word market) value . . .”

Specific Instructions, Part X, Balance Sheet, Line 14, Intangible Assets. –

“Report on this line the total (insert the word book) value . . .”

Specific Instructions, Part XI, Financial Statements and Reporting, Line 2 –

Organizations for which individual entity audited financial statements are not issued but that are a component of combined or consolidated audited financial statements and for which a group return is not filed would seem to be precluded from responding affirmatively on this line. Sufficient generally accepted auditing procedures are not performed at the individual entity level to enable an independent audit report to be issued. Additional guidance is needed in the instructions for this question.

Appendix G, Section 4958 Excess Benefit Transactions, Disqualified Person –

The fourth paragraph, third bullet point is very confusing. We cannot determine what the intent is, thus we have no recommendation for improvement.

Appendix G, Section 4958 Excess Benefit Transactions, Supporting Organizations –

Third paragraph – the amount \$5,000 should have a comma inserted.

Fourth paragraph – Delete the first sentence, as it is redundant to the first paragraph and move the reference to Form 4720 to the first paragraph.

SCHEDULE B

Page 1 of the return Special Rules – First item does not agree with instructions.

SCHEDULE C

General Instructions, Purpose of Schedule –

Insert statement to the effect that if the 501(c)(3) entity or any joint ventures in which it is a partner 1) has not participated in political activity, 2) has not made a 501(h) election, and 3) has participated in only insubstantial lobbying activity, the preparer can proceed directly to Part II-B.

SCHEDULE D

Form does not match instructions for Part II, Line 5 and Part XIV.

Specific Instructions, Part X, Other Liabilities –

First paragraph, last sentence – move to **Column (a)** after first sentence and rewrite to read, “Organizations are required to separately report liabilities for federal income taxes and amounts owed to related organizations.” **Note** repeats previous wording, so delete.

Specific Instructions, Part XIV, Supplemental Information

Bullet Part XIII, lines 2d and 4 (add b behind 4)

SCHEDULE G

Form does not match instructions for Part II, Line 2.

Specific Instructions, Part III, Column C –

Please provide examples such as raffles, opportunity drawings, and games of chance.

SCHEDULE H

Highlights –

1. Second bullet point – add reference to **General Instructions, Purpose of Schedule** for the aggregation of information.

Third bullet point, last sentence – the listing of each location is onerous and does not increase transparency to the understanding of the operations being reported. The American Hospital Association's recommendation that entities licensed and/or certified as a hospital be listed is a reasonable approach to reporting physical locations.

4. The IRS asks for comments on how to report the cost of Medicaid and provider taxes and revenues from uncompensated care pools. We support reporting based on the primary purpose of the funds. We do not believe using proportionality is an appropriate tool due to variability across states.

Specific Instructions, Part I, Line 3a –

Last sentence – For clarity add “or equal to” after “must be less than.” The example as written seems to restrict the entity's ability to establish an income level at a deemed percentage of the federal poverty guidelines.

Specific Instructions, Part I, Line 7a-7k –

The last parenthetical reference to aggregation should be directed to **General Instructions, Purpose of Schedule**.

Column (a) – Persons served, defined as patient contact or encounters. We suggest an example for inpatient and outpatient services to describe what is to be counted.

Specific Instructions, Part II, –

We recommend that the opening paragraph contain a clarifying statement that activity reported in Part I is not to be reported here. We also suggest that the paragraph include a comment that any activities that are for the reporting entity's own work force development, and other functions that are for the operational needs of the reporting entity are not to be reported in this section.

Specific Instructions, Part IV, Management Companies & Joint Ventures –

Instructions seem to state that if the reporting entity is a partner or shareholder in a joint venture in which both listed organizational representatives and medical staff physicians have an aggregate share of profits in excess of 10% and joint venture either provides management services, medical care, or has real or personal property used by the reporting entity or others to provide medical care, the venture would be listed here. The instructions as written are not easy to follow and we are left with an ambiguity as to what is to be reported. Please clarify this section.

Specific Instructions, Part VI, Supplemental Information

Question 1 – First paragraph - Insert "if applicable" after "Provide."

Question 1 – Fifth paragraph – Delete sentence "If a combination of a cost accounting system and cost to charge ratio was used, explain this combined method." The sentence is repeated two sentences later.

Worksheets –

A general statement prior to the worksheet instructions should indicate that the worksheets are a tool provided to facilitate reporting and are not mandatory. The alternative is to parenthetically state in the header for each Worksheet "(Optional to Use)."

Worksheet 6 – Subsidized Health Services – We encourage the IRS look to the American Hospital Association's comments regarding subsidized health services. We concur with the comments and encourage the IRS to expand subsidized health services to include services such as skilled nursing facilities, ancillary services, physician clinics, and specialists' coverage for emergency rooms. These services are not all inclusive as each geographic region has its own unique needs that the community hospital may subsidize.

SCHEDULE K

We recommend that terminology be consistently used through the Schedule K instructions. The term tax-exempt bond issue(s) is used interchangeably with tax-exempt liability. We believe the use of the word liability does not clearly reflect that the Schedule K is for bonds and that other types of liabilities would not be reported here.

Highlights –

Second sentence discusses refunding of pre-2003 issues. We concur with the American Hospital Association's comments and encourage the inclusion of their recommendations in the instructions

Specific Instructions, Definitions –

On-behalf-of issuer – We suggest a rewrite as follows:

“A corporation organized under a state's nonprofit corporation law, in which the state or other political subdivision holds a beneficial interest while the debt is outstanding. (Rev. Proc. 82-26, 1982-1 C.B. 476.) An on-behalf-of issuer also includes a constituted authority empowered by a state or local governmental unit specifically to issue tax-exempt bonds in order to further public purposes. (Rev. Rul. 57-187, 1957-1 C.B. 65.)”

Gross Proceeds – Rewrite as follows:

“The term “gross proceeds” generally means any *Proceeds* (defined below) and replacement proceeds of an issue. (Reg. sections 1.148-1(b), (c).)”

Proceeds – Should transferred proceeds be included in the definition?

Investment Proceeds – We suggest adding a definition for this category of proceeds.

Unspent Proceeds – We suggest adding a definition for this category of proceeds.

Part I, Bond Issues and Part II, Proceeds

Reference to specific Form 8038 Part and Line numbers would facilitate completion of Schedule K. For example Column (g) in Part I appears to correspond to Form 8038, Part IV, Lines 27 and 28. Part II, Line 2 appears to correspond to Form 8038, Part IV, Line 26.

Part I, Bond Issues, Line 1 –

The phrase “total amount of proceeds” is used. Please explain how this is determined and if it is different from the issue price. Consider adding the terms to the list of definitions.

Part II, Proceeds, Line 8 –

We are uncertain how the IRS intends an entity to report multiple projects financed from a single bond. An example would be helpful.

Part III, Private Business Use, Line 3a –

Eliminate the second sentence as it is expanded with third sentence.

In conclusion, we again want to express our appreciation for the opportunity to respond and thank the IRS in advance for its careful consideration of our feedback. Should there be any questions or clarifications Adventist Health can provide, please contact Harlene Issa, Senior Analyst–Tax and Financial Reporting at 916-781-4651.

Sincerely,
/s by Harlene Issa
Douglas E. Rebok
Senior Vice President & CFO